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IFAR® Journal

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INCORPORATING **STOLEN ART ALERT**

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EDITOR-IN-CHIEF: Sharon Flescher
EDITOR: Kathleen Ferguson
DESIGN: Alice Fisk MacKenzie

International Foundation for Art Research (IFAR)
500 Fifth Avenue, Suite 935, New York, NY 10110
Tel: (212) 391-6234 Fax: (212) 391-8794 www.ifar.org

EXECUTIVE DIRECTOR: Sharon Flescher
ASSISTANT TO THE DIRECTOR: Kathleen Ferguson
ART RESEARCH DIRECTOR: Lisa Duffy-Zeballos

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COVER: REMBRANDT VAN RIJN, *Self-Portrait, Wearing a White Feathered Bonnet,* 1635. (Cropped)
Oil on panel. 90.5 x 71.8 cm. Inv. no. 810136. Buckland Abbey, Devon. See story on p. 32.

TO THE EDITOR:

Re: ""Artists Resale Rights in the U.S.: Overdue or Shouldn't Do?"

***(IFAR Journal,* Vol. 14, no. 4 / Vol. 15, no. 1)**

It is not surprising but certainly revealing that none of the participants in the *IFAR Evening* program (November 25), as reported in the *IFAR Journal,* was an art collector. The participants were, respectively, a law school lecturer, a Congressman, officials from the Copyright Office and the Artists Rights Society, and a lawyer from Christie's auction house.

If, in fact, your program had included a representative of the art collecting world, the discussion would likely have taken a very different turn. We have to leave aside all the altruistic considerations about art and artists in discussing artist resale rights since the consideration is solely an economic one. Basically, the argument is that the person who creates and sells a product (a work of art) is entitled to some percentage of the upside when the product is resold.

When you recognize that the buyer of the product (the collector) is taking all economic risk attendant to the purchase, he should be entitled to all of the reward upon resale if it turns out that there is one. The artist is taking no risk whatsoever. He has realized the full price at which he agreed to sell the work in the first instance. He has not risked any of his capital in the transaction. So why, one can reasonably ask, should the artist who has assumed no risk receive a share of any return the collector may realize? Is the artist going to share the loss with the collector if it turns out that the resale of the artwork garners less than the original sale price?

Moreover, the economics underlying the current proposal make no sense. Assume a collector purchased a work of art in 2004 for the round price of $100,000 and he wants or needs to resell that work in this year 2014. Leave aside for the moment the issue of the resale price. In 2004 the artist might reasonably be paid $50,000 from the purchase price with the balance going to the gallery. If the artist invests his $50,000 for the ten-year period at an annual return rate of 5%, he will have about $81,500 in 2014. By contrast, the collector has foregone any return at all on his purchase price. If, instead of buying the art, he had invested his $100,000 for the ten-year period at the same annual return rate of 5%, he would have had about $163,000 in 2014. So, in fact, without even addressing the question of the resale price, one can see that the original transaction yielded very different results after ten years. The artist has realized a gain of $31,500 over and above the original sale price while the collector has lost $163,000 but still owns the painting.

To make things fair then at the time of resale in 2014, the collector should receive $163,000 representing his lost investment return. That puts both the artist and the collector on equal footing. Only now can we make some assumptions about the resale price. If the work is resold for $250,000, the proponents of the artist resale rights scheme would argue that the artist should receive some share of the $87,000 "gain" the collector received in excess of the $163,000. But suppose the work only sells for $125,000? In that case the collector has sustained a "loss" of $38,000 from the $163,000. There is no suggestion in the resale rights scheme that the artist should share in that loss.

Of course these purely mathematical calculations ignore the fact that the collector has had the enjoyment of the work for ten years. At the same time, however, perhaps the artist's career has been boosted by the fact that his work has been held in the collection, with attendant prestige. This is the argument that Robert Scull presented to Robert Rauschenberg many years ago when Rauschenberg complained about the profit Scull had made in reselling a Rauschenberg painting.

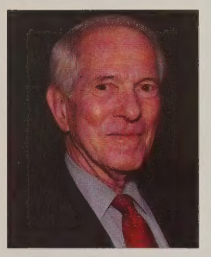
There is a symbiotic relationship between artists and collectors. Neither can thrive without the other. However, a scheme whereby the artist somehow becomes a financial "partner" with the collector who purchases his artwork has no rational economic basis. Both the concept and the proposal under consideration are seriously flawed.

DON KAUL

THE CHANGING OF THE GUARD AT IFAR

JACK A. JOSEPHSON PASSES THE CHAIRMAN'S BATON TO ANTHONY WILLIAMS

This June, at a meeting of the Board of Directors, Jack A. Josephson, IFAR's esteemed Chairman since December 1997, formally stepped down from the leadership position and passed the baton to Board member Anthony Williams, whom we heartily welcome. We are pleased to note that Mr. Josephson, who joined IFAR's Board in 1989, remains on the Board, so we can continue to benefit from his wise counsel.



Jack A. Josephson

Jack Josephson succeeded Arthur G. Altschul as IFAR's Chairman in December 1997. For the past 17 years, we have benefitted from his wisdom, integrity, diplomacy, and broad knowledge of the art field. He led IFAR during a period of sustained growth and stability, overseeing a transformation that de-emphasized IFAR's previously important – and pioneering – role in the field of stolen art registration and recovery to focus on its educational and research mission. He leaves the chairmanship with IFAR financially stable, secure in its mission, and optimistic about the future.

Jack came to IFAR with an already distinguished record in the public and private sector. After a successful business career, he devoted himself to scholarship and the arts, becoming a respected Egyptologist, with numerous publications to his credit as well as a Distinguished Visiting Professorship at the American University in Cairo (in 2007), and, in 2010, a Festschrift published in his honor. In 1990, President George H.W. Bush appointed him Chairman of the Cultural Property Advisory Committee (CPAC), then under the USIA. He served in that role, so relevant to IFAR, from 1990–1995. In 2008, Jack drew on that experience at an *IFAR Evening* devoted to CPAC. Over the years, he has held many other board and council positions, including a trusteeship at the Brooklyn Museum and the chairmanship of the Council of Friends at the Institute of Fine Arts. The list of his accomplishments and volunteer activities is long. That is all the more reason that IFAR is honored (and I am personally delighted) to have had him as our leader for so many years, and we look forward to his continued involvement.

Introducing Anthony Williams

IFAR's new Chairman, Anthony Williams, is an attorney and Co-Executive Partner in New York at the law firm of McKenna Long & Aldridge. A graduate of Harvard College, he earned a law degree from New York University, where he was Editor-in-Chief of the *New York University Journal of International Law and Politics.* He has been admitted to the Bars in New York and California, as well as the United States Supreme Court. Prior to joining McKenna Long, Tony, as he is known, was a partner at DLA Piper US, and before then, at Coudert Brothers LLP, where he served as Chairman from 1993-2001. His broad international business and legal experience and civic and philanthropic commitment are manifested in his numerous charitable and board activities. In addition to IFAR, he is a Trustee of the Boris Lurie Art Foundation, a member of the Board of Directors of the Noguchi Museum and of AXA Art Insurance Corporation, and Vice Chairman of the Board of HELP USA, Inc., among many other organizations.

Tony joined the Board of Directors of IFAR in 2012. In this brief period, he has already played a strong leadership role and impressed everyone with his knowledge of nonprofit governance, his intelligence, energy, and creativity, and, not insignificantly, his enthusiasm for and belief in the importance of IFAR. We welcome him to the chairmanship and know that IFAR remains in very good hands with him at the helm. I personally look forward to working with him.

SHARON FLESCHER
Executive Director, International Foundation for Art Research
Editor-in-Chief, *IFAR Journal*

LEE MACCORMICK EDWARDS

(October 20, 1937 – April 19, 2014)

SCHOLAR, PROFESSOR, FRIEND

MEMBER, IFAR BOARD OF DIRECTORS, 2000 – 2014

WE WILL MISS YOU

None of Lee Edwards' friends and colleagues could quite believe the news that Lee had died. Although she had been ill for over a year, if anyone could beat the odds, we thought, it would be Lee. During the last weeks of her life, Lee – who had moved back to her native Australia from New York City – kept us marveling at her indomitable spirit and sense of adventure and fascinated by her tales of whale watching in turbulent seas, trips to Melbourne to sit through the long hours of the Ring Cycle, and – best of all – the production of a magnificent catalogue of her photographs that were exhibited in one of Sydney's major galleries only a few months before her death.

Lee was an enthusiastic member of IFAR's Board of Directors for 14 years. During that time, we benefited greatly from her background as an art historian and college professor with a Ph.D. from Columbia University; from her generous financial support; and from her excellent judgment and down to earth approach to the issues involving the organization. After her move to Sydney, it would not be unusual to hear Lee's cheery voice coming in loud and clear over the conference phone during board meetings, although it was the middle of the night her time. One of Lee's most important contributions to IFAR was providing a selection of excellent interns from her art history class at Sarah Lawrence College. Often, they were former students, with Masters degrees, who had kept in touch with her. Once her student, always her friend. She steered the best ones to IFAR when they were transitioning into careers in the art field. Aside from attending to numerous office chores and research, her students applied their expertise in a number of other ways, including initiating me into database programs that helped me hold up my end of the job when I was the Senior Art Research Associate at IFAR.

Lee's accomplishments were prodigious. In addition to her courses in nineteenth century art at Sarah Lawrence, Lee pursued careers in photography and jewelry design; assembled an unusual collection of nineteenth-century British art; published an award-winning monograph on the Victorian artist Hubert von Herkomer; and was active in promoting classical music and opera, serving as Chairman of the International Festival Society and head of the American Friends of the Salzburg Festival. She also served for many years on the board of directors of her family's multinational company, SI Group Inc., and was also an accomplished sportswoman, excelling in skiing, tennis, golf, and sailing.

Above all, Lee was a good friend who kept up with a wide circle of acquaintances from different walks of life, dozens of whom congregated each holiday season at the party she and Michael hosted in their New York apartment on the first Monday of December. For me and for so many others, this was a chance to see friends and colleagues going back many years, do a little "networking," admire the intriguing pictures on the walls, and indulge in Lee's amazing homemade fruitcake.

On behalf of IFAR's Board of Directors and staff, I extend our deepest sympathy to Lee's husband, Michael Crane, and her daughter, Alison Curwen, and her family. Lee's sparkling personality and *joie de vivre* will be a lasting inspiration to us all.

GERTRUDE WILMERS

Member, IFAR Board of Directors

TWITTER PHOTOS PROTECTED BY COPYRIGHT
AFP & GETTY ORDERED TO PAY $1.2 MILLION

Aftershocks from the 2010 earthquake in Haiti were felt late last year when Agence France Press and Getty Images were ordered to pay $1.2 million for unauthorized use of a photojournalist's Twitter images of the devastation. The case, *Agence France Press v. Morel,*[1] raised the novel but increasingly relevant question of whether—and under what circumstances—a photographer who uploads images to a social media site, such as Twitter, retains copyright in those works or whether they can be freely distributed and marketed by others. A federal court in New York recently held that such images are in fact subject to copyright limitations.

THE PHOTOS

The expensive lesson began on January 12, 2010, when an earthquake devastated Port-au-Prince, Haiti, killing approximately 300,000 people and leveling scores of buildings. Daniel Morel, a photojournalist and native Haitian, was in Port-au-Prince and captured the aftermath.

The earthquake severely damaged vital infrastructure, including telecommunication systems. In an attempt to break the news yet retain credit for his work and unable to communicate otherwise, Morel uploaded several images to Twitter's photo-sharing website, TwitPic, with the attributions "Morel" and "by photomorel" on the page, but not on the images themselves. Minutes later, another TwitPic user, Lisandro Suero from the Dominican Republic, copied and posted Morel's photos onto his own TwitPic page without Morel's attributions; instead, claiming them as his own. Suero had not visited Haiti after the earthquake.

From here, the story gets so confusing that even the federal court could not conclusively resolve the sequence of events. But it seems that within an hour after Morel posted his photos, Vincent Amalvy, the Director of Photography for North and South America at Agence France Press (AFP), a French news agency that offers photo services to worldwide media, downloaded some of Morel's photos and placed them in AFP's ImageForum, an online market it uses to distribute photographs. Simultaneously,

"The case ... raised the novel but increasingly relevant question of whether—and under what circumstances—a photographer who uploads images to a social media site, such as Twitter, retains copyright in those works. ..."

another AFP staffer apparently downloaded duplicate images from Suero's page to place *them* in the ImageForum. AFP then transmitted all of the images to Getty, an image licensing company that holds exclusive North American distribution rights for AFP. Getty, in turn, licensed Morel's photos without his knowledge or permission with the credit line "AFP/Getty/Lisandro Suero" to numerous news agencies, including CNN, CBS, *The New York Times,* and *The Washington Post.* Morel received no compensation, let alone a credit line, for his images to appear on the front pages of newspapers worldwide, on websites, and on television and cable news networks. Court documents do not reveal whether Suero received compensation for the images.

The following day (January 13, 2010), Benjamin Fathers at AFP questioned the attribution of

[1] *Agence France Presse v. Morel,* No. 10-cv-02730 (S.D.N.Y. Jan. 14, 2011) *(denying mot. to dismiss);* (S.D.N.Y. Jan. 14, 2013) *(granting in part mot. for summ. judg.).*

the images to Lisandro Suero and AFP issued a "caption correction" to credit Morel, but the duplicate photos credited to Suero were not removed. As the day progressed, AFP continued to discuss the proper attribution of the images internally, noting at one point that it was "very difficult to know to whom the photos belong[ed], that's one of the risks of Twitter but we are going to be vigilant so that we find the right bylines. ..."[2] In an effort to resolve the confusion and obtain permission for its use of the images, AFP attempted to contact Morel but received no reply. Notwithstanding the correction AFP had issued, Getty continued to license the images, variously crediting AFP, Morel, and Suero as the photographer and identifying AFP/Getty as an authorized source, despite the fact that Morel had not consented to such use.

"Minutes later, another TwitPic user ... copied and posted Morel's photos onto his own TwitPic page without Morel's attributions ..."

The next day (January 14, 2010), Corbis, the photo agency that exclusively represents Morel, contacted Getty to assert rights to the photos. In response, Getty pulled the photos credited to Morel and AFP issued a "kill" for eight images listing Morel as the photographer. It did not, however, identify specific image numbers used by Getty, provide thumbnails of the images in question, or provide notice that any of the photos had been credited to Suero. Despite the "kill" notice, several publications and news programs that had previously obtained the images from AFP/Getty continued to use them, often crediting Suero as the source.

More than two weeks later, Corbis again contacted Getty, noting that "Getty still has not removed the Daniel Morel images from its website" and providing a link to photographs credited to Suero. That evening, Getty removed the images credited to Suero.

THE LAWSUIT

On March 26, 2010, AFP filed suit against Morel, asking the Federal District Court in the Southern District of New York to declare that it had not infringed Morel's copyrights when it distributed his images. Morel counterclaimed, alleging copyright infringement under the U.S. Copyright Act of 1976, as well as trademark violations against AFP, Getty, CBS, ABC, TBS, *The Washington Post,* and other unnamed parties that had used his images. He also filed claims against AFP and Getty for violation of the 1998 Digital Millenium Copyright Act (DMCA), which prohibits the knowing distribution of false copyright management information. As a result of the media's use of his photos, Morel alleged that he had suffered damage to his reputation and devastating commercial harm, including lost sales, lost opportunities to license his images, and diminution in the value of his copyrights. CBS, ABC, and TBS reached settlements with Morel and were dismissed from the case. Suero was not named in the suit.

In a motion to dismiss Morel's counterclaims, AFP and Getty argued that they were *entitled* to use Morel's images. A brief look at how Twitter works may help explain their position. Launched in 2006, Twitter is an online social networking service that enables users to send and read short 140-character text messages, called "tweets." Twitter also serves as an information network, handling billions of search queries per day. Twitter users may "follow" (or subscribe to) other users' tweets and "retweet" content to their own Twitter page, which will in turn share it with their followers. One measure of success—*and the whole point*—

2 Ibid. Slip. op. at 6 (S.D.N.Y. Jan. 14, 2013).

for many Twitter users is to have their content widely republished. In 2013, Twitter was one of the ten most-visited websites. TwitPic, a separate website, allows users to post pictures to Twitter; it is frequently used to upload and distribute pictures in real-time as an event is taking place.

"Twitter is an online social networking service that enables users to send and read short 140-character text messages, called 'tweets'. … One measure of success—*and the whole point*—for many Twitter users is to have their content widely republished."

AFP and Getty argued that they were permitted to use Morel's images in accordance with Twitter's Terms of Service, which apply when using TwitPic and state, in relevant part:

> You retain rights to any Content you submit, post or display. … By submitting, posting or displaying Content … you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods. …
>
> Tip: This license is you authorizing us to make your Tweets available to the rest of the world and to let others do the same. But what's yours is yours—you own your content.

The district court disagreed, concluding that the Terms of Service permitted *only* Twitter and its partners to use content in the manner that AFP and Getty had used the photos. Furthermore, while Twitter's terms *encourage* broad re-use of content, they do not, the court said, *require* a user to license photographs to other users. Even so, the court noted that Twitter's Terms of Service did delineate limited circumstances in which third parties may re-use photos, but only when certain conditions are met, such as including the name of the original user and any accompanying text. AFP/Getty had not fulfilled those requirements. Accordingly, Morel's remaining copyright infringement claims were allowed to proceed. His DMCA claims were also allowed to proceed, but his trademark claims were dismissed as duplicative of the copyright claims.

In April 2012, Morel and the remaining counter-defendants filed cross-motions for summary judgment on the outstanding claims. AFP, Getty and *The Washington Post* again argued that TwitPic's Terms of Service authorized them to use Morel's images. The court again rejected this defense, instead finding both AFP and *The Washington Post* liable for copyright infringement. According to the court, "the fatal flaw" in AFP's argument was that it failed to recognize that, "even if some re-uses of content posted on Twitter may be permissible," this does not necessarily require a user to grant others a license to use their content. Twitter's Guidelines, the court said, "underscore that the Twitter Terms of Service were not intended to confer a benefit on the world-at-large to remove content from Twitter and commercially distribute it." Significantly, the court's decision did not rest upon the fact that AFP, Getty, or *The Washington Post* had profited from their use of Morel's images; commercial use of material undoubtedly influences when and who is sued for infringement, but it is not a factor in determining whether infringement has occurred.

"While Twitter's terms *encourage* broad re-use of content, they do not, the court said, *require* a user to license photographs to other users."

A jury trial was necessary to determine whether the infringe-

ment by AFP and *The Washington Post* was willful or innocent and to determine whether Getty had infringed.[3] *The Washington Post* subsequently settled with Morel, leaving just AFP and Getty as counter-defendants.

"It would have been legal for AFP [or] *The Washington Post* ... to link their sites directly to Morel's original images or for a Twitter partner to use the images."

In November (2013), a jury reached the unanimous verdict that AFP and Getty willfully infringed Morel's copyrights and awarded him $1.2 million in damages (the maximum statutory damages available under the law). The jury also found Getty and AFP liable for 16 violations of the DMCA for their failure to properly credit Morel for his work, awarding him another $400,000 in damages. Post-trial motions to set aside the verdict remain pending as IFAR goes to press.

THE BIGGER PICTURE

One clear lesson can be gleaned from this case, which illustrates the risks both to those who post photos and those who use images posted on social media sites. Generally, the terms of use for the websites state whether images belong to the image owner or to the social media service and whether there are any limits on re-use. Ironically, it would have been legal for AFP, *The Washington Post* or any other news service to *link* their sites directly to Morel's original images or for a Twitter partner to use the images. Where enumerated conditions for re-use are not met, however, third parties (such as AFP, Getty, and their subscribers) do not have the right to copy, distribute, or otherwise commercially exploit social media content without permission from the owner. Enforcing those rights, though, may be another story.

— ANN-MARGRET GIDLEY,
IFAR Legal Associate and
SHARON FLESCHER

• • •

PRINCE COPYRIGHT SUIT SETTLED
THORNY ISSUES LEFT UNADDRESSED

In a quiet ending to a ballyhooed and controversial case, appropriation artist Richard Prince settled in March with Patrick Cariou, the photographer who brought dozens of copyright infringement claims against him for his mixed-media series, *Canal Zone*. Most of the claims had been dismissed by the Second Circuit Court of Appeals last year as a "fair use" of the photographer's work, but five of the thirty allegedly infringing images were remanded to the district court for reevaluation.[1] Now, the remaining claims against Prince, his dealer, Larry Gagosian, and the Gagosian Gallery have been withdrawn as part of an out-of-court settlement for an undisclosed amount.

Filed in 2008, the case attracted significant attention in March 2011 when a lower court rejected Prince's fair use defense for incorporating several of Cariou's photos of Rastafarians published in Cariou's book, *Yes, Rasta.*

[1] Cariou v. Prince, No. 08 Civ. 11327 (S.D.N.Y. Mar. 18, 2011); *rev'd in part, vacated in part, remanded in part,* 714F.3d 694 (2d Cir. 2013).

"Fair use" is an exemption from infringement that permits limited borrowing of copyrighted material for purposes such as commentary, criticism, news reporting, and scholarship. Concluding that appropriation art is *not* an inherently fair use of someone else's copyrighted work, the lower court stated that Prince's paintings could only be "transformative" (and therefore likely a fair use) to the degree that they *commented* on the underlying works. Since Prince himself testified that he had not intended to comment upon Cariou's work, the lower court found him liable for direct copyright infringement on all thirty claims. The court also found Larry Gagosian and the Gagosian Gallery, which exhibited and sold the paintings, liable for contributory and vicarious infringement. The judge then issued an extreme injunction ordering the defendants to turn over all infringing copies of Cariou's photos, including Prince's *Canal Zone* paintings which incorporated them, "for impounding, destruction, or other disposition" of Cariou's choosing. The defendants were also ordered to inform anyone who had purchased a *Canal Zone* painting that the works were made illegally and could not be legally displayed.

As IFAR previously reported,[2] the Second Circuit Court of Appeals in New York largely reversed that decision last April,[3] ruling that twenty-five of the thirty allegedly infringing works were, as a matter of law, a fair use of Cariou's photographs, because they were sufficiently "transformative" to "manifest an entirely different aesthetic" from the original works. The appellate court criticized the lower court for applying an incorrect standard, explaining that "the law does not require that a secondary use comment on the original artist or work." Instead, it said, a new work generally must alter the original with "new expression, meaning, or message" to qualify as a fair use. The Second Circuit sent five "closer questions" back to the district court with instructions to apply the new standard in evaluating their transformative nature. Critics of the ruling said it lacked guidance for courts to follow and failed to offer predictability for the future, as the distinction between the infringing and non-infringing works was not very clear.

> "The settlement leaves open the question of when appropriation crosses from 'fair use' to infringing use."

The U.S. Supreme Court refused Cariou's petition to review the Second Circuit's decision last November, and the "closer question" claims for the five works remained pending before the lower court at the time of the settlement. Prince and the Gagosian defendants, however, are now free of any claim of copyright infringement. Many legal practitioners and artists are undoubtedly disappointed that the settlement leaves open the question of when appropriation crosses from "fair use" to infringing use.

—**A.M.G.** and **S.F.**

2 Ann-Margret Gidley and Sharon Flescher, "Appeals Court Says Prince Made 'Fair Use' of (Most of) Cariou's Copyrighted Photos; Cariou Plans to Ask Supreme Court to Review," *IFAR Journal*, Vol. 14, nos. 1 & 2 (2013), pp. 5-8.

3 *Cariou v. Prince*, No. 11-1197-cv, *slip op.* (2d Cir. Apr. 25, 2013).

• • •

REUNITED—THREE KHMER SCULPTURES RETURN TO CAMBODIA

FIGURE 1. Three returned *Prasat Chen Sculptures,* Cambodia, Khmer, Koh Ker period, 10th century. Sandstone. Exhibited June 3 in Phnom Penh. Ph: William E. Todd, U.S. Ambassador to Cambodia.

The legal battles seemed to fade into the background as Buddhist blessings greeted three sandstone Khmer sculptures at Cambodia's Phnom Penh airport in late May when they arrived separately from the U.S. Several days later, on June 3, Cambodian officials held a ceremony to honor all three, reunited for the first time in decades **(FIG. 1)** after a successful Cambodian repatriation campaign, aided by the U.S. legal process, and the generosity of cultural institutions. It was a scene that would have been difficult to envision only a few months before, with traditional Cambodian crowns of flowers placed around the necks of the sculptures as Cambodian dancers performed and the Deputy Prime Minister welcomed them home. His words were emotional: "In a long 40-year journey, surviving civil wars, looting, smuggling and traveling the world, these three have now regained their freedom and returned home."

The figures, which depict battling mythological characters from the *Mahabharata,* stood together in a Cambodian jungle temple for nearly 1,000 years until they were removed under still-unknown circumstances around 1970 (date disputed), with all three eventually ending up in the U.S. As IFAR has extensively reported,[1] Cambodia asserted that they were stolen by a network of looters and exported illegally as its civil war raged and the Khmer Rouge seized power. Two figures were returned by auction houses—one amicably from Christie's; the other—known as the *Duryodhana*—by Sotheby's and its consignor after a long legal battle. The third was returned by the Norton Simon Museum in California. No one admitted any wrongdoing.

First to be formally returned was the *Duryodhana* **(FIG. 2),** at a ceremony in New York on May 7, where the Cambodian Deputy Prime Minister acknowledged the U.S. Attorney's Office for the Southern District of New York, as well as representatives from Homeland Security, and l'École Française d'Extrême-Orient (EFEO) for their contributions towards the successful repatriation. Eric Bourdonneau, the EFEO archaeologist who matched the Sotheby's statue to the pedestal and stone feet still in situ in the temple complex, explained Cambodia's vision to recreate the original sculptural arrangement in its new national museum. Cambodia urged other museums and collectors around the world "to follow the example of returning plundered treasures to their rightful owners as part of the worldwide campaign for the protection of cultural heritage."

Three weeks later, on May 29, the *Duryodhana* arrived

FIGURE 2. *The Duryodhana,* Cambodia, Khmer, Koh Ker period, 10th century. Sandstone. Ht: 62 ⅜" (158.4 cm). Returned to Cambodia pursuant to a legal settlement with Sotheby's. Ph: court documents.

[1] See previous articles in the *IFAR Journal,* Vol. 13, no. 4 (2013), pp. 17-23; Vol. 14, nos. 1 & 2 (2013), pp. 11-13; Vols. 14/15, nos. 4/1 (2014), pp. 25-26.

FIGURE 3. ***The Bhima,*** **Cambodia, Koh Ker, Angkor Period, 10th century. Sandstone. Ht: 61 ¾" (156.8 cm). Returned to Cambodia as a gift from the Norton Simon Museum. Photo © 2012 Norton Simon Art Foundation.**

back in Cambodia, thus ending a saga that began in 2011 when Sotheby's listed it for auction, and Cambodia, with the help of the U.S. government, began efforts to bring it home. After negotiations failed, the U.S. government filed a civil forfeiture action on Cambodia's behalf. The Federal District Court in New York denied Sotheby's' initial attempt to dismiss the case and then, with a summary judgment motion pending, and to the surprise of many, the parties settled, with Sotheby's and its consignor agreeing to return the sculpture and the U.S. government withdrawing any accusations of wrongdoing. The settlement left many questions unresolved, including whether the early 20th century French Colonial laws, under which Cambodia claimed to own the statues but which Cambodia itself seems not to have enforced, would have held up in U.S. court.

The return of a second sculpture, known as the *Bhima* **(FIG. 3),** was also announced at the May 7 ceremony and also took many by surprise. For the past four decades, it had been on display in the Norton Simon Museum in California, but museum officials had quietly been in discussions with Cambodia for months, even traveling to the country. Shortly after that trip, the museum announced that it would return the warrior as a "gift" despite a good faith disagreement as to Cambodia's ownership claim. It was, the museum said, "a gesture of friendship" in response to Cambodia's "unique and compelling" request that the sculpture—which once stood opposite the *Duryodhana* in the temple complex—was essential to helping Cambodia rebuild its soul as a nation. The *Bhima*, once again alongside the *Duryodhana* **(FIG. 4),** is to form the centerpiece of the new Cambodian National Museum dedicated to displaying the nine Khmer sculptures from the Prasat Chen temple. In conjunction with the agreement to return the *Bhima*, which arrived in Phnom Penh on May 28, Cambodia agreed to lend other ancient Khmer statues to the museum in the future. The Norton Simon's generosity regarding the Cambodian statue stands in stark contrast to its determination *not* to return two Lucas Cranach paintings in its collection that are claimed by the heir of their pre-WWII owner. (See story on page 23.)

"The settlement left many questions unresolved, including whether the early 20th century French Colonial laws, under which Cambodia claimed to own the statues but which Cambodia itself seems not to have enforced, would have held up in U.S. court."

FIGURE 4. ***Bhima*** **and** ***Duryodhana*** **— reunited. Cambodia, Koh Ker, Angkor Period, 10th century. Sandstone. The two figures squared off for the first time in centuries. Ph: William E. Todd, U.S. Ambassador to Cambodia.**

The third sculpture, a small mythological figure known as the *Pandava* or *Balarama*, was airlifted to Cambodia from Christie's in New York on May 31. Christie's had sold the sculpture in 2000 and then again in 2009, but

"It was, the [Norton Simon] said, 'a gesture of friendship' in response to Cambodia's 'unique and compelling' request that the sculpture … was essential to helping Cambodia rebuild its soul as a nation."

re-purchased it earlier this year at its own initiative after determining that it may have been stolen from Cambodia. Without revealing the name of the 2009 collector who agreed to sell it back, Christies said that the purchaser was cooperative and also pleased that the sculpture was returning to Cambodia. Originally, it sat just a few feet from the *Duryodhana* and the *Bhima* as an onlooker to the epic battle.

Recovering all nine statues that originally stood in the temple has been a national priority for Cambodia, which seeks to reattach them to their pedestals (all left in situ when the statues were removed) and to recreate the battle scene in the new Cambodian National Museum. The three recently repatriated figures will join two sculptures returned by the Metropolitan Museum of Art last year;[2] Cambodia hopes to recover the remaining figures to complete the scene.

Helen Jessup, President of the Friends of Khmer Culture, told IFAR that she believes the Met's decision last year to return their pieces influenced both Sotheby's and the Norton Simon to return the companion statues. Jessup underscored the importance of the returns, which are, she said, "central to the Cambodian people reclaiming a national image and sense of pride in their heritage" that was lost during the Khmer Rouge era.

—**A.M.G.** and **S.F.**

2 See Ann-Margret Gidley and Sharon Flescher, "Met Returns Khmer Sculptures to Cambodia; Case Against Sotheby's Allowed to Move Forward," *IFAR Journal*, Vol. 14, nos. 1& 2 (2013), pp. 11-13.

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SLAM MUMMY MASK CAN REST IN PEACE IN THE MUSEUM—FOR NOW

The St. Louis Art Museum (SLAM) can keep the Egyptian funerary mask **(FIG. 1)** that the U.S. government wanted to seize and repatriate to Egypt. So ruled a three-judge panel of the Eighth Circuit Court of Appeals on June 12 in the forfeiture suit brought by the U.S. government.[1] And while the government could have requested a rehearing en banc (by a full panel), the Department of Justice instead announced on July 28 that it will "take no further legal action with respect to the mask."[2] Nonetheless, Egypt has vowed to continue to fight for the mask; in what manner, remains to be seen.

1 *United States v. Mask of Ka-Nefer-Nefer*, Civ. No. 12-2578 (8th Cir., Jun. 12, 2014).

2 Robert Patrick, "Ancient Egyptian Mask Likely to Stay at St. Louis Art Museum After Feds Give Up Legal Fight," *St. Louis Post-Dispatch*, July 28, 2014.

FIGURE 1. ***Mummy Mask of Ka-Nefer-Nefer*, Egyptian, Dynasty 19 (1307 – 1196 B.C.) Plaster, resin, glass, wood, gold, and pigment, 21 1/16" x 14 5/16" x 9". Coll. St. Louis Art Museum.**

This is a story that IFAR has been following for nearly a decade,[3] ever since the U.S. government brought a civil forfeiture action against SLAM on behalf of Egypt when officials there claimed that the Mask of Ka-Nefer-Nefer had been stolen decades earlier. The mask was discovered and documented in Egypt in 1952, but was found to be missing from a storage facility during a 1973 inventory. SLAM acquired it in 1998 from a New York dealer for $499,000 after the museum's due diligence turned up nothing untoward. The parties dispute what happened to the mask in the intervening years. The U.S. government argued that it must have been "stolen, smuggled, or clandestinely imported" into the U.S. from Egypt and sought to seize it based on a Customs statute (19 U.S.C. §1595a) that gives the U.S. government broad power to seize "merchandise," including artworks and antiquities, introduced into the U.S. "contrary to law," even if purchased in good faith.[4]

A federal district court in St. Louis dismissed the government's forfeiture claim in March 2012 saying it was "completely devoid of any facts" showing that the mask had *actually* been stolen from Egypt.[5] When the government presented an amended complaint, the court said it was too late — the deadline for such a motion had passed.

The government appealed to the Eighth Circuit, which sided with SLAM. The ruling came as no surprise as, in Oral Argument, one of the three judges on the panel characterized the government's request as "beg[ing] for a do-over."[6] As if that were not bad enough news for the government, the panel ruled that the proposed amended complaint was not only "too late," it was also "too little," because it *still* did not show that the mask was ever stolen.

And while the Eighth Circuit's dismissal was narrowly based upon the government's avoidable procedural errors, the court also noted that the government's efforts to seize the mask were "an attempt to expand the government's forfeiture powers at the likely expense of museums and other good faith purchasers in the international marketplace for ancient artifacts."

The appellate court suggested that the government pursue its arguments in the separate declaratory judgment suit that the museum had filed prior to the government's action, but that had been stayed while the forfeiture suit proceeded. The government admitted in Oral Argument that it preferred to pursue the forfeiture suit under the 1595a Customs statute because of its lower burden of proof — "probable cause" rather than "preponderance of the evidence." The opportunity for the government to do so was immediately closed, however, when SLAM unilaterally dismissed its declaratory action just days after the Eighth Circuit ruling — presumably because it no longer needed an ownership declaration after the ruling in its favor. According to the Federal Rules of Civil Procedure, the museum was able to dismiss that suit because the government had not yet responded to its complaint — another apparent lost opportunity by the government. SLAM preserved the right to bring another declaratory action should it choose to do so.

> "... the Department of Justice instead announced on July 28 that it will 'take no further legal action with respect to the mask.'"

While the Eighth Circuit's decision was unanimous, one of the three judges — Judge Diane

3 See *IFAR Journal*, Vol. 8, no. 2 (2005-06), Vol. 12, no. 4 (2011), Vol. 13, no. 4 (2013), Vol. 14, nos. 1& 2, and Vol. 14, no. 4 (2014).

4 See Sharon Flescher and Mary Morabito Rosewater, "Forfeiture That's 'Custom Made': Is a Tough Statute the New Trend in Art Recovery? Three Recent Cases Suggest That It Is," *IFAR Journal*, Vol. 12, no. 4 (2011), pp. 10-16.

5 *United States v. Mask of Ka-Nefer-Nefer*, No. 11-cv-504 (HEA) (E.D. Mo. Mar. 31, 2012).

6 *United States v. Mask of Ka-Nefer-Nefer*, Civ. No. 12-2578, Oral Arg. Trans., (8th Cir. Jan. 13, 2014).

Murphy — wrote separately to express her concern that "[w]hile this case turns on a procedural issue, courts are bound to recognize that the illicit sale of antiquities poses a continuing threat to the preservation of the world's international cultural heritage." She warned that, "Museums and other [buyers] need to exercise caution and care in their dealings in order to protect this heritage and to understand that the United States [government] might ultimately be able to recover such purchases."

As already noted, the deadline for the government to request a re-hearing en banc of the Eighth Circuit's decision passed with the U.S. Attorney acknowledging that the government did not have any evidence that the mask had been stolen, but nor had it turned up evidence of a lawful transfer.

Egypt has said that it will not abandon its pursuit of the mask. In a June 14 press release, Minister of Antiquities Mohamed Ibrahim said that he will "resort to the private sector in the United States" to put pressure on the "St. Louis Art Museum according to the agreements signed in this regard." It is not clear what he has in mind. But for now, at least, it looks like Ka-Nefer-Nefer is staying put, unless the museum decides to heed calls for it simply to return the mask to Egypt. Given the long legal battle, however, that is not likely.

—**A.M.G.** and **S.F.**

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MONGOLIA DINOSAUR REDUX—
MORE FOSSILS RETURNED WHILE SMUGGLER HEADS TO PRISON

Mongolian cultural property issues remained in the news as IFAR went to press. On July 10, at a major repatriation ceremony in New York, the U.S. government handed over several dinosaur skeletons and a fossilized egg to the government of Mongolia **(FIGS. 1-3).** Most of the items, which were dug up in the Gobi Desert, were seized as a result of the government's investigation of Eric Prokopi, the self-proclaimed "commercial paleontologist" arrested in 2012 in connection with the import and attempted sale of a *Tyrannosaurus Bataar* skeleton from Mongolia.[1] He pleaded guilty last December, was released on bail, and agreed to cooperate with the U.S. government. This June 3rd, a year and a half later, Prokopi was sentenced in federal court in New York to three months imprisonment and supervised release.[2] Although he initially faced up to 17 years in prison, both his defense attorney *and*, exceptionally, federal prosecutors urged leniency because of that cooperation. Ongoing investigations, all of which were kick-started by information Prokopi divulged to authorities, may reveal additional fossils.

FIGURE 1. Homeland Security Agent James T. Hayes and Mongolian Ambassador Od Och at the July repatriation ceremony. Photo: IFAR.

The July repatriation ceremony, which IFAR attended, took on

1 See Mary Morabito Rosewater and Sharon Flescher, "Florida Paleontologist Makes No Bones; Pleads Guilty to Smuggling Dinosaur Fossils," *IFAR Journal*, Vol. 13, no. 4 (2012/13) and Ann-Margret Gidley and Sharon Flescher, "Seized Dinosaur Back in Mongolia Will be Housed in New Museum; More Fossils to Follow," *IFAR Journal*, Vol. 14, nos. 1 & 2 (2013).

2 See *U.S. v. Prokopi*, No. 12-cr-0981 (S.D.N.Y. filed Oct. 5, 2012); see also the related civil forfeiture case *U.S. v. One Tyrannosaurus Bataar Skeleton*, No. 12-cv-4760 (PKC), slip op. (S.D.N.Y. Nov. 14, 2012).

the semblance of a visit to a natural history museum, as U.S. Attorney Preet Bharara described the "veritable nest of dinosaurs" on display, including the remains of two *Hadrosaur* skeletons, at least six *Oviraptor* skeletons, a nearly complete *Tyrannosaurus Bataar* skeleton, and one *Oviraptor* egg. Most of the fossilized remains had been obtained from Prokopi through eight different seizures; others were voluntarily returned by his British business partner. The egg, however, was seized during a separate investigation of an unrelated business.

FIGURE 2. Two *Gallimimus* skeletons in rock, found in the Gobi Desert, Mongolia. Aged 68 to 80 million years. Returned to Mongolia by the U.S. government. Photo: IFAR.

FIGURE 3. *Fossilized remains* of several of the 18 dinosaur skeletons returned to Mongolia by the U.S. government. Photo: Jason Mills.

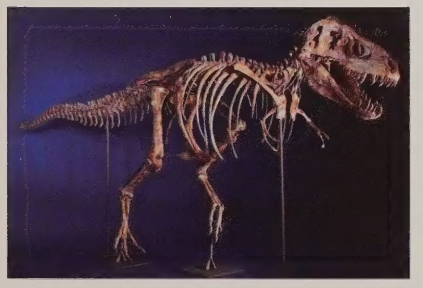

FIGURE 4. *Tyrannosaurus Bataar* skeleton. Late Cretaceous period. Dinosaur fossil returned to Mongolia last year that started the federal forfeiture and criminal suits. Photo: Mark Mauthner, Heritage Auctions.

So far, pieces of thirty-one fossilized skeletons have been recovered by Homeland Security Investigations (HSI) — eighteen of which were returned at the ceremony. The enormous and nearly complete *Tyrannosaurus Bataar* skeleton that started it all when it appeared for auction in New York in May 2012 was repatriated last year **(FIG. 4)**. The remains of the other 12 dinosaurs will be returned later pursuant to an agreement that was signed by the U.S. and Mongolian governments in June.

HSI Special-Agent James T. Hayes, who supervised the investigations, captured the essence of the repatriation ceremony when he said that the fossils being returned "don't belong to any private collection or to any one owner. They belong to the people of Mongolia. ..." To house them, Mongolia has built a new "Central Museum of Dinosaurs," whose fossils, according to Mongolian law, are considered state-owned cultural property.[3]

> "This June 3rd, a year and a half later, Prokopi was sentenced in federal court in New York to three months imprisonment and supervised release."

In his defense when arrested, Prokopi claimed that he did not know that it was illegal for a private person to purchase or own Mongolian fossils. He was, he said, under the impression that the trade in Mongolian dinosaur fossils was not only legal, but that it was even endorsed by the Mongolian government. Dinosaur fossils, he noted, were sold in the Mongolian National Museum gift shop as recently as 2009 and were widely available on eBay and other international markets, including mineral and fossil shows throughout the U.S. Moreover, when he traveled to Mongolia in 2006, he was introduced to an employee from the Mongolian Paleontological Center, a government-sponsored entity, who took

[3] See IFAR's Art Law & Cultural Property Database at www.ifar.org, which includes a country summary and the complete text of several Mongolian patrimony laws.

him on a tour of the Gobi Desert where numerous fossils had been found and, in Prokopi's words, "led [him] to believe that as long as the proper Mongolian government permits were obtained," it was legal to purchase and export Mongolian fossils. Prokopi's belief was bolstered by stories from colleagues who claimed to have obtained such permits.

"Prosecutors disclosed that 'there is not an active fossil investigation that has not been informed, to some degree, by information given by Prokopi in this case'."

But, alas, Prokopi was not such an innocent. He purchased an almost complete *Tyrannosaurus Bataar* (a cousin of the more famous *Tyrannosaurus Rex*) skeleton in Mongolia and packed it into three crates to ship to the U.S. in 2010. After learning that the fossils lacked any proper export permits, he sent the crates to the U.S. through Great Britain, which he listed as the country of origin. He declared the shipment value at $15,000 (although he had paid approximately $30,000) and downplayed the content by describing it as, among other things, "1 fossil lizard," and "broken fossil bones." The U.S. Attorney asserted that Prokopi had previously shipped portions of the *T. Bataar* into the U.S. by changing the "country of origin" on accompanying forms from Mongolia to Japan after UPS asked too many questions regarding Mongolia. Nonetheless, Prokopi maintained that he was not a thief or a "black market ringleader who surreptitiously removed bones from the Gobi Desert in the dead of night," rather, a man who filled out Customs forms dishonestly – thereby violating U.S. import laws. The truth seems to lie somewhere in between.

SENTENCING

Arguing for a non-custodial sentence, Prokopi's defense attorney, George Lederman, cited several federal cases where other defendants imported archaeological material through falsified Customs forms yet received no prison time. Additionally, he argued, Prokopi had already suffered immensely. Due to the widespread press coverage, he became "radioactive" in his field — dealers, auction houses, and collectors are loathe to give him projects. On a personal level, he lost both his house and his marriage and forfeited all his items. Moreover, Lederman added, the U.S. government had largely achieved its goal since his arrest and prosecution: there were no Mongolian fossils at the most recent Tucson gem show. Perhaps most importantly, Prokopi had not only made full restitution to Mongolia, he also assisted the nation in reassembling the *Bataar* specimen, demonstrating his dedication to his field.

Significantly, federal prosecutors, too, urged leniency. According to court documents, Prokopi provided information that was and remains crucial in the government's efforts to police the "black market in stolen national treasures that operated in plain sight." Prosecutors disclosed that "there is not an active fossil investigation that has not been informed, to some degree, by information given by Prokopi in this case." Specifically, they noted that additional investigations based on Prokopi's cooperation and knowledge of the fossil industry remained on-going in Wyoming, California, and New York.

In all, Prokopi was sentenced to three months in custody and fifteen months of supervised release with mandated community service. He is scheduled to begin serving the custodial portion of the sentence in September so he can spend the summer with his two young children. Perhaps another summer he will take them to see the dinosaur fossils in Mongolia's new museum.

—A.M.G. and **S.F.**

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CALIFORNIA MUSEUM RELINQUISHES THAI AND NATIVE AMERICAN ANTIQUITIES

In a post-script to a headline-grabbing story from 2008 comprising undercover surveillance, museum raids, and allegations of international smuggling and tax evasion, the Bowers Museum of Art in Santa Ana, California this June agreed to surrender 71 Native American objects to the U.S. government and 542 ancient artifacts to Thailand.

The Native American objects — ladles — were allegedly removed from federally protected lands in New Mexico. The Thai objects, including vases, bowls, and other artifacts, were allegedly removed from Ban Chiang, a Neolithic (B.C. 2000) settlement and burial site in Northern Thailand discovered in 1957 and excavated beginning in 1967. Ban Chiang is considered one of the most important archaeological sites in all of Southeast Asia and was declared a UNESCO World Heritage Site in 1992. While Ban Chiang objects do not have high monetary value, they *do* have cultural and archaeological significance.

Return of the objects was a long time in the making. Federal authorities began an undercover operation in 2003 to investigate an alleged smuggling network responsible for distributing — laundering is probably more accurate — looted Thai, Cambodian, Burmese, Vietnamese, Guatemalan, and El Salvadorian artifacts to U.S. museums as tax-deductible donations at inflated values. That investigation resulted in surprise federal raids in January 2008 of two galleries, a private collection, and four California museums: the Bowers Museum, the Pacific Asia Museum in Pasadena, the Mingei International Museum in San Diego, and the Los Angeles County Museum of Art. Federal agents seized thousands of objects and documents during the highly publicized raids, but, until now, little else seemed to result from the multi-year investigation that involved at least three federal agencies. Media articles in 2013 that pointed out the lack of results posed a potential embarrassment to prosecutors for "over-reaching."

Now, as part of a non-prosecution agreement with the Los Angeles County District Attorney's Office, the Bowers Museum has agreed to return its collection of Ban Chiang objects, which had been held in constructive custody for the federal government in the museum's basement since the raid. In exchange, prosecutors agreed not to criminally charge anyone at the museum. Interestingly, an attorney for the museum said that the museum had offered to return the objects "years ago." And, apparently, it was not the only raided museum that has offered to return objects that nonetheless remained in constructive custody for the government.

"Federal agents seized thousands of objects and documents during the highly publicized raids, but, until now, little else seemed to result from the multi-year investigation that involved at least three federal agencies."

The Bowers acquired most, if not all, of the Thai objects when Armand Labbé, one of the initial targets of the investigation and since deceased, served as chief curator. He allegedly accepted donations of illegally imported antiquities from an undercover agent posing as a collector and may have known that their acquisition was illegal. Thailand claims state ownership of all artifacts under its 1961 law on "Ancient Monuments, Antiques, Objects of Art and National Museums."[1] The undercover

[1] Available on IFAR's Art Law & Cultural Property Database at www.ifar.org, which includes a country summary and the complete text of several Thai patrimony laws.

agent reportedly discussed that law with Labbé prior to Labbé accepting the objects and showed him photos of dig sites from which they had recently been excavated. After Labbé's death, the undercover agent again attempted to donate items to the museum's director, Peter Keller, but Keller refused to accept them. At the time of the raids, Keller said of the Ban Chiang objects, "We honestly did not know this material was illegal."

"The case, it seems, was as much a tax fraud scheme as it was an antiquities looting scheme."

According to affidavits, the undercover agent was introduced to Labbé, and the museum, by Robert Olson, an antiquities dealer at the heart of the investigation. Olson both donated directly and arranged for others to donate items that they had purchased from him to the Bowers and other museums. Olson was caught red-handed when he sold illegal items to the undercover agent and then guided him to Jonathan Markell, an L.A. gallery owner, who appraised them for nearly four times their sales price. Some of the appraisals stated that they had been prepared by Roxanna Brown, Director of the Southeast Asian Ceramics Museum at Bangkok University. She was arrested but died of health problems while in custody one week later, before it was learned that her signature had been used without her permission. The federal government settled a lawsuit brought by Brown's family for $880,000.

After the illicit sale and fraudulent appraisal, Olson arranged for the agent to donate the items to museums, thereby obtaining fraudulent tax deductions. The scheme was not unique to Olson's interactions with the undercover agent, but instead was, according to investigators, standard operating procedure for Olson and Markell. The case, it seems, was as much a tax fraud scheme as it was an antiquities looting scheme.

Olson and Markell were criminally indicted in sealed court filings in 2008 for illegally importing antiquities and falsifying customs forms. Markell has also been indicted on federal tax charges based on the inflated appraisals. Olson was indicted again in 2012 on charges that he violated the National Stolen Property Act (NSPA), which criminalizes the transport, possession, and sale of stolen property. The *McClain*[2] *and Schultz*[3] cases recognize that artifacts owned by a foreign government under a valid patrimony law constitute a predicate for theft under the NSPA (but the items must be valued at $5,000 or more in order to trigger the Act, and it is not clear whether the Ban Chiang or Native American items would meet that threshold). Removal of Native American artifacts from federally protected lands is prohibited by the Archeological Resources Protection Act (ARPA) of 1979.

The indictments were unsealed earlier this year at the request of the U.S. government so that it could "formally initiate" prosecution. Olson is scheduled to be tried in Los Angeles in December. No trial date has been set for Markell. No museum officials or private collectors were indicted as a result of the investigation.

The three other museums targeted in the 2008 raids have not yet returned objects, although, as noted, some have offered to do so.

—A.M.G. and **S.F.**

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2 *United States v. McClain (McClain I)*, 545 F.2d 988 (5th Cir. 1977), *reh'g denied*, 551 F. 2d 52 (5th Cir. 1977); *United States v. McClain (McClain II)* 593 F.2d 658 (5th Cir. 1979), *cert. denied*, 444 U.S. 918 (1979).

3 *United States v. Schultz*, 178 F.Supp. 2d 445 (S.D.N.Y. 2002), *aff'd*, 333 F.3d (2d Cir. 2003), *cert. denied*, 540 U.S. 1106 (2004).

MOVES ON CULTURAL EXCHANGE LEGISLATION

Two pieces of pending legislation on both sides of the Atlantic would, if passed, significantly affect cultural exchange. The U.S. bill, which passed the House with a 388-4 vote on May 6, seeks to promote cultural exchange by shielding foreign-owned objects from lawsuits while on loan to U.S. institutions and, in so doing, shore up perceived inconsistencies in current legislation. Critics argue, however, that it would allow museums to knowingly exhibit stolen art. A proposed European Union Directive, by contrast, aims to make it easier for E.U. Member States to recover unlawfully removed objects classified as national treasures.

The U.S. bill, the Foreign Cultural Exchange Jurisdictional Immunity Clarification Act, was initially introduced in 2012.[1] It passed the House of Representatives but died in Committee in the Senate when the 112th Congress ended. An identical version of the Act (H.R. 4292) has now passed the House again and been introduced in the Senate. The bill is designed to resolve an apparent tension between the Foreign Sovereign Immunities Act of 1976 (FSIA, 28 U.S.C. § 1605) and the Immunity from Seizure Act of 1965 (IFSA, 22 U.S.C. § 2459).

The FSIA is a jurisdictional statute that permits foreign sovereigns, who are otherwise immune from suit, to be sued in U.S. federal court when certain exceptions are met – such as when an item was taken in violation of international law, or when the claim is based on commercial activity in the U.S. The FSIA has been the basis for several Holocaust-era restitution lawsuits, including *Altmann v. Republic of Austria* and the pending claims in *Cassirer v. the Kingdom of Spain* and *de Csepel v. Hungary.*

The IFSA, which pre-dates the FSIA and was enacted at the height of the Cold War, provides immunity from seizure or other judicial process for objects of cultural significance imported into the United States for temporary display. It was intended to encourage international museum loans. Immunity is not automatic and requires application to the State Department, including a statements disclosing any known or potential claims for an object (although critics believe approval is given too easily). More than a decade of litigation might have been avoided in the *Portrait of Wally* case if MoMA had applied for and received federal immunity for that Egon Schiele painting in accordance with the IFSA.

"The U.S. bill, which passed the House with a 388-4 vote on May 6, seeks to promote cultural exchange by shielding foreign-owned objects from lawsuits while on loan to U.S. institutions. ... Critics argue, however, that it would allow museums to knowingly exhibit stolen art."

The two Acts (FSIA and IFSA) have been in tension since 2005 when a Federal District court in Washington, D.C. decided in *Malewicz v. City of Amsterdam*[2] that, despite having immunity from *seizure* under the IFSA, the loan of several paintings from Amsterdam to U.S. museums in *itself* constituted "commercial activity" within the meaning of the FSIA and that, therefore, a *lawsuit* for their return *could* be commenced in the United States,

1 S. 2212, 112th Cong. (2012).

2 *Malewicz v. City of Amsterdam*, 362 F. Supp.2d 298 (D.D.C. 2005); *see also* 517 F.Supp.2d 322 (D.D.C. 2007).

even if the works could not be detached and seized. The parties (heirs to the artist Kasimir Malevich and the City of Amsterdam, which owns the Stedelijk Museum that lent the Malevich works) subsequently settled prior to appellate court review. The currently proposed legislation would amend the FSIA to clarify that where an object has been granted IFSA immunity, the loan in and of itself cannot satisfy the "commercial activity" exception of the FSIA. Nazi-era restitution claims are *explicitly* exempted by the bill.

Senator Orrin Hatch, co-sponsor of the 2012 bill, explained, "The dilemma here is easy to see … these statutes are not supposed to be in conflict." Concerned that foreign lenders may be hesitant to send works to the U.S. unless they are assured that their art will be protected against both suit and seizure here, he emphasized that the proposed legislation would simply "return these two statutes to the harmony they were intended to have all along."[3]

The Committee report accompanying the bill summarizes that judicial decisions allowing suits over otherwise protected objects, "[d]efeat the very purpose of the IFSA … [and] have turned IFSA on its head and paved the way for further lawsuits of the very sort that Congress intended to prevent."[4] Rep. Steve Chabot, co-sponsor of the current bill, says that Congress needs to clarify the relationship between these two Acts "in order to keep the exchange of foreign government-owned art flowing."[5]

While the bill is well-intentioned, it has faced considerable opposition. Tess Davis, for example, currently an Affiliate Researcher at the University of Glasgow, argues that the proposed bill will make "American museums a harbor for pieces of illicit art" and will leave rightful owners without any legal recourse to recover property in U.S. courts, although she cites examples of Nazi-looted art that would be specifically exempt.[6] Pierre Ciric, attorney for the Holocaust Art Restitution Project, criticizes the bill for eliminating one of the few remaining deterrents to the illicit trafficking of looted artworks by barring otherwise valid claims. He also argues that the Nazi-exception is too narrow, as it excludes, for example, all objects obtained from forced sales or other forms of looting or plunder not executed directly by Nazi forces.[7]

While the U.S. law might make things a little more difficult for claimants, particularly regarding cultural property claims, the European Directive, IP/14/430, would be a boon to such claims. The Directive, proposed last year but just approved by the European Parliament, would replace the 1993 Directive (93/7/EEC) currently in force and give teeth to the policy that cultural goods unlawfully removed from a Member State after January 1, 1993 and currently located in another Member State should be returned. Changes to the law to ensure that more items are returned include an expanded definition of eligible objects, an extended deadline to bring claims, the shifting of the burden of proof to the current possessor if compensation is sought, and more cooperation between national authorities.

The next step is approval by the E.U. Council and then, if adopted, European Union countries will have 18 months to integrate it into their national laws.

—**A.M.G.** and **S.F.**

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3 Remarks upon the introduction of S. 2212 (112th Cong. Rec. S1849-50 (2012)).

4 Committee Report accompanying H.R. 4086 (Report 112-413 (Mar. 19, 2012).

5 Remarks upon the introduction of H.R. 4292 (113th Cong. Rec. H3428-30 (2013)).

6 Tess Davis, "U.S. Bill Would Allow Museums to Knowingly Exhibit Stolen Art," *available at* http://theconversation.com/us-bill-would-allow-museums-to-knowingly-exhibit-stolen-art-25637 (last visited July 20, 2014).

7 Pierre Ciric, letter to the House of Representatives, *available at* http://plundered-art.blogspot.com/2014/05/re-hr-4292-foreign-cultural-exchange.html (last visited July 20, 2014).

VAN GOGH'S *NIGHT CAFÉ* WILL REMAIN OPEN
CLAIMANT LOSES SUIT AGAINST YALE

Vincent van Gogh's iconic painting *The Night Café* (FIG. 1) has been hanging in the Yale University Art Gallery for more than half a century and a recent court ruling assures that it will remain there. In March 2014, the Federal District Court of Connecticut ended a five-year ownership dispute over the painting by rejecting the claims of Pierre Konowaloff, heir of the painting's former owner, Russian industrialist and art collector Ivan Morozov.[1]

The facts of the case reach back nearly a century, to the Russian Revolution, when Morozov's large art collection was nationalized by the Bolshevik government in 1918. Years later, in 1933, the government of the recently-established Soviet Union, in need of hard currency, sold the painting, which was purchased later that year by American collector Stephen Clark. A Yale alumnus, Clark bequeathed the van Gogh to his alma mater upon his death in 1960, where it has been prominently displayed ever since.

Yale's ownership of the painting was challenged in 2008 when Konowaloff, Morozov's great-grandson, asserted that the nationalization of Odalisque had been illegal and that, therefore, Morozov's heirs remained its rightful owners.[2] Yale responded by filing suit in federal court in Connecticut seeking to quiet title in the painting.

The University sought dismissal of the case under the Act of State Doctrine, which prohibits American courts from ruling on the legitimacy of the actions of a foreign government taken within its own borders and affecting only its own citizens. As such, although the Bolshevik/ Soviet nationalization of privately-held artwork, including *The Night Café*, would have been illegal, even reprehensible, in the United States, as an action of a foreign government on its citizens within its own borders, it could not be challenged in U.S. courts. Konowaloff countered that the seizure of *The Night Café* violated international law and that the Act of State Doctrine should not apply.

In 2010, while his case against Yale was still underway, Konowaloff brought a similar suit in federal court in New York against the Metropolitan Museum. It was the ruling in the New York case that led to the recent judgment in favor of Yale.

FIGURE 1. VINCENT VAN GOGH (Dutch, 1853-1890). *The Night Café*, 1888. Oil on canvas. 70.0 x 89.0 cm (28 ½" x 36 ¼"). Bequest of Stephen C. Clark. Access. no. 1961.18.34. Yale University Art Gallery.

The facts of both cases, and the arguments of the opposing parties, were nearly identical. The New York case involved another nationalized Morozov Post-Impressionist work, Cézanne's *Madame Cézanne in the Conservatory* (FIG. 2), also purchased by Clark in 1933 and later bequeathed to the Met. Konowaloff asserted that the Cézanne, too, was cultural property, the seizure of which violated international law, while the Met raised the same defense as Yale, arguing that the Act of State Doctrine prohibited the court from ruling on the legitimacy of the Bolsheviks' actions.

1 *Yale University v. Pierre Konowaloff*, No. 3:09-cv-00466 (D. Conn. Mar, 20, 2014).

2 See Sharon Flescher, "Van Gogh's *Night Café* is Subject of Ownership Dispute," *IFAR Journal*, Vol. 11, no. 1, p. 2.

FIGURE 2. PAUL CÉZANNE (French, 1839-1906). *Madame Cézanne (Hortense Fiquet, 1850-1922) in the Conservatory,* 1891. Oil on canvas. 92.1 x 73 cm (36 ¼" x 28 ¾"). Bequest of Stephen C. Clark, 1960. Access no. 61.101.2. The Metropolitan Museum of Art.

Unlike the Connecticut district court, however, the New York district court quickly granted summary judgment, dismissing the case in 2011 under the Act of State Doctrine. When Konowaloff appealed that ruling to the Second Circuit, the Connecticut court stayed the case against Yale pending the outcome of the appeal, as the decisions of the Second Circuit are binding on the lower courts of Connecticut as well as New York. In 2012, the Second Circuit affirmed the ruling of the New York district court.[3]

Immediately following the Second Circuit's decision, Yale moved for summary judgment,

"The Connecticut district court granted Yale's motion for summary judgment on the very same grounds the Second Circuit applied in his case against the Met …"

asserting that the facts of the two cases were virtually identical. In an attempt to distinguish the cases, however, Konowaloff presented two novel arguments. He asserted that, unlike the New York case, the Connecticut case had "progressed beyond the pleading [stage] to the discovery stage" and, as a result, the "applicability" of the Act of State Doctrine could not be determined until it had been established that the successor to the U.S.S.R. (Russia) recognized its predecessor's expropriations. Konowaloff further contended that, as his own investigators had been unable to find any documentation in the Russian Archives regarding the alleged 1933 sale of *The Night Café* to Stephen Clark, this was evidence that the sale itself had never taken place and that the painting had actually been transferred as part of an "intricate laundering operation."

The new arguments did not hold sway. In March 2014, the Connecticut district court granted Yale's motion for summary judgment on the very same grounds the Second Circuit applied in Konowaloff's case against the Met: the expropriation of *The Night Café* by the Bolsheviks in 1918 constituted a state action and Konowaloff's claims were, therefore, barred by the Act of State Doctrine. The court rejected Konowaloff's new arguments, noting that even though he had been granted additional time, he had "not produced any evidence that the successor to the U.S.S.R. (Russia) had renounced the 1918 appropriations." Moreover, his investigators' failure to verify the 1933 sale of the painting to Clark was irrelevant because the state action at issue was the 1918 expropriation of the painting, *not* the 1933 sale.

The court rulings against Konowaloff are just the latest examples of American courts using the Act of State Doctrine to rule against heirs in cases involving artwork nationalized by the Bolsheviks.[4] This does not bode well for similar claims in the future.

—NICHOLAS DIETZ
IFAR Legal Associate

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[3] *Konowaloff v. The Metropolitan Museum of Art,* 702 F.3d 140 (2d Cir. 2012).

[4] See, for example, a 1976 decision, *Stroganoff-Scherbatoff v. Weldon,* 420 F. Supp. 18 (S.D.N.Y. 1976). See also the discussion in this *Journal,* p. 23 and following, where the Act of State Doctrine may be at issue in a pending claim for two Cranach panel paintings in the Norton Simon Museum.

NEW LIFE BREATHED INTO CLAIM FOR NORTON SIMON CRANACHS

BROADER IMPLICATIONS FOR OTHER HOLOCAUST CLAIMS; DEBATE SPILLS OUT TO MEDIA

The legal battle for Cranach's *Adam* and *Eve* panels in the Norton Simon Museum **(FIG. 1)** was resuscitated in June when a federal appellate court in California, reversing a 2012 dismissal of the case by the district court, ruled that the ownership claim for the panels by Marei von Saher, the heir to their pre-World War II owner Jacques Goudstikker, could go forward after all.[1] Not unexpectedly, the museum asked for a rehearing of the case en banc – by 11 judges of the court; not just a 3-judge panel[2] – saying that the issues, which concern U.S. post-war foreign policy and may implicate the separation of powers under the U.S. Constitution, warranted such review. As IFAR was at press, the rehearing was denied.

Meanwhile, the debate has spilled over to the popular media, notably a series of Op-Ed pieces that appeared in the *Wall Street Journal* between June 30 and July 25. Whatever happens, it is clear that this case, which IFAR has written about since 2008,[3] is not likely to end soon.

Important on many levels, and clearly a victory for von Saher, the Ninth Circuit's 2-1 decision says that von Saher's conversion and replevin claims for the Cranach diptych are *not* pre-empted by the foreign affairs doctrine, as the lower court had ruled. The doctrine reserves the power to conduct foreign affairs – such as the resolution of wartime claims – to the Executive Branch of the U.S. government.

The crucial question addressed by the appellate court was whether the paintings had ever been subject to restitution proceedings in the Netherlands ("internal" restitution) after they were returned to the Netherlands by the U.S. following the war ("external" restitution). The Majority said "no," resting that conclusion, in part, upon the non-binding "Washington Principles" of 1998, giving them legal weight – for the *first* time in a court decision. That ruling has potentially broad implications for other Holocaust-era restitution claims as well. The Ninth Circuit remanded the case to the district court for further proceedings, specifically directing the lower court to address whether a *different* doctrine – the Act of State Doctrine – might bar von Saher's claims.

FIGURE 1A AND B. LUCAS CRANACH THE ELDER, ***Adam* and *Eve*, c. 1530. Both, oil on panel, 75 x 27 ½ in. Currently in the collection of the Norton Simon Museum, Pasadena, but claimed by Marei von Saher, heir of Jacques Goudstikker.**

1 *Von Saher v. Norton Simon Museum of Art at Pasadena,* 754 F.3d 712 (9th Cir. 2014).

2 In the Ninth Circuit, an en banc panel consists of the Chief Judge and ten additional judges. In the absence of the Chief Judge, an eleventh judge is drawn by lot.

3 See, Carla Shapreau, "Nazi-Era Restitution Lawsuits: New Developments in California Courts," *IFAR Journal,* Vol. 10, no. 2 (2008), pp. 21-32; and *IFAR Journal,* Vol. 11, no. 2 (2009), pp. 10-11; Sharon Flescher and Mary Morabito Rosewater, "In Eve-n Another Ruling, California Court Adam-ant that Cranach Claim Cannot Proceed," *IFAR Journal,* Vol. 13, nos. 1 & 2 (2012), pp. 8-9; and "In Brief – Claimant Vows to Continue Fight for Cranachs after Supreme Court Setback," *IFAR Journal,* Vol. 12, no. 4 (2011).

"The Majority said 'no,' resting that conclusion, in part, upon the non-binding 'Washington Principles' of 1998, giving them legal weight—for the *first* time in a court decision. That ruling has potentially broad implications for other Holocaust-era restitution claims as well."

BACKGROUND

Unsurprisingly, the litigants see the facts of the case differently, as did the court in its split decision. Some of the facts, however, are not in dispute. To recap: von Saher's father-in-law, Jacques Goudstikker, a Dutch Jewish art dealer, bought the Cranachs (for 47,000 German marks, or $11,186 USD) at a 1931 Berlin auction of works being sold by the cash-strapped Soviet government.[4]

When the Nazis invaded the Netherlands in May 1940, Goudstikker and his family fled the country, leaving his assets, including over 1,000 works of art, behind. He died in a shipboard accident soon after leaving. Part of his enormous art collection, including the *Adam* and *Eve* at issue, ended up in the hands of Nazi Reichsmarschall Hermann Goering through an unauthorized sale. Goering, who admired Lucas Cranach the Elder (1472-1553) enormously, hung the panels in the Large Study of his lavish country estate, Carinhall.[5] They were recovered by the victorious Allies after the war and were sent to the Munich Central Collecting Point, after which, in accordance with U.S. policy, they were sent in 1946 ("external" restitution) to the Netherlands for "internal" restitution to the individual owner(s). Goudstikker's widow, Desi, did not file a claim for the Cranachs by the Dutch deadline of July 1951 (believing, von Saher asserts, she would not receive a just and fair hearing); the panels were not part of a subsequent 1952 Dutch government settlement, which Desi made regarding other works; nor were they part of a 2006 settlement with von Saher.

In 1961, Prince George Stroganoff-Scherbatoff, an officer in the U.S. Navy and descendant of a Russian noble family, believing that the Cranach panels were part of his family's extensive art collection that had been confiscated in 1917 by the Bolsheviks, nationalized, and later sold by the Soviet government at the 1931 Berlin auction of the "Stroganoff Collection, Leningrad" **(FIG. 2)** (where Goudstikker purchased them and where Stroganoff's family purportedly submitted a protest to the sale),[6] made a claim for the panels to the

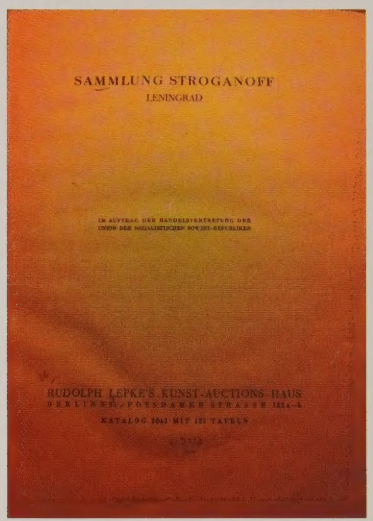

FIGURE 2. Frontispiece, auction catalogue, "Stroganoff Collection, Leningrad." Rudolph Lepke Auction House, Berlin, May 12-13, 1931.

4 "Sammlung Stroganoff, Leningrad," Rudolph Lepke's Kunst-Auctions-Haus, Berlin, May 12-13, 1931. The sale was devoted to works said to be from the Stroganoff Collection. For the price paid for the Cranachs, see: John Elliott, "Stroganoff Art Sold in Berlin by Soviet Order," *New York Herald Tribune,* May 13, 1931, and the annotated sale catalogue at the Frick Library.

5 See Nancy Yeide, *Beyond the Dreams of Avarice: The Hermann Goering Collection* (Dallas: Laurel Publishing, LLC, 2009), p. 278.

6 It was widely reported in the international press in 1931 that Princess Scherbatoff-Stroganoff, of Paris, wrote a letter protesting the sale of her family's collection. The letter said, in part: "This collection remains entirely my property. … The Soviet republic has taken possession of this collection in a way that sets at defiance every principle of international law." She added that she and her heirs would make any buyers responsible for any harm to the pictures that "they thus illegally require." (Quoted from the *New York Herald Tribune,* op. cit, May 13, 1931) Whether the letter was actually sent to the Lepke Auction House or read or circulated at the sale is not certain. According to the *New York Times,* May 13, 1931, "Herr Lepke denied receipt of such a letter," but said that "it would not have prevented the sale anyway."

Dutch government. Years before then, he had written to officials of the Monuments Fine Arts and Archives section requesting return of any works from his family's collection they might have recovered. He did not receive a response,[7] perhaps because it was not U.S. policy to return works to individual claimants, but rather to the countries from which they were taken.

Stroganoff had better luck with the Dutch. In 1966, after reviewing his request, the Dutch government transferred the two Cranach panels to him, along with a Petrus Christus (or "after") painting that was also sold in the 1931 Berlin auction of the Stroganoff Collection. In exchange, Stroganoff paid 60,000 guilders (approximately $16,600 USD) and waived his claim for still another work – a Rembrandt.

It now appears that Stroganoff may have been mistaken about the Cranachs. It seems that as early as 1919, the Cranach panels were in a church in Kiev, Ukraine and then eventually entered a state-owned museum attached to Kiev's Academy of Science, where they were restored and from which they were taken in 1929 and then sent to Leningrad in preparation for eventual sale at the Berlin auction.[8] Where the panels were prior to 1919 is unknown, and whether they were ever part of the famed Stroganoff collection **(FIG. 3)** is disputed by the litigants. Nonetheless, Princess Scherbatoff-Stroganoff (George's mother), who protested the 1931 sale in the international press, claimed ownership of the entire contents of the sale, and the Norton Simon Museum asserts that Prince George Stroganoff, before he died, stated "his satisfaction that the works were returned to him as a settlement of his claim."[9] In any case, five years after the Dutch government transferred the panels to Stroganoff, he sold them (through a dealer) to the Norton Simon for $800,000.[10]

FIGURE 3. Interior, Stroganoff Palace, Leningrad, as shown in the catalogue of the Stroganoff Collection sale.

7 For a discussion of Stroganoff's request to the MFAA and the provenance of these panels, see Nancy Yeide, Konstantin Akinsha, et al., *The AAM Guide to Provenance Research* (Washington, D.C.: American Association of Museums, 2001), pp. 135-137.

8 The Kiev church was the Church of the Holy Trinity. See, James Schmitt, "Adam and Eve, by Lucas Cranach," in *Pantheon, Der Cicerone,* Vol. 7, May 1931, for a discussion of the paintings, including their Kiev history (in German, with an English Translation by C.C.H. Drechsel). See Yeide, *AAM Guide,* op. cit, pp. 136-137, for an excellent overview of the Kiev history and the suggestion that the Cranachs were mingled in Leningrad with works from the Stroganoff Collection in order to give them an aristocratic provenance. The catalogue raisonné for Lucas Cranach *(Die Gemälde von Lucas Cranach),* prepared by Max Friedländer and Jakob Rosenberg in 1932, lists a provenance only going back to the Museum of the Academy of Science, in Kiev (see entry #164, p.60). The 1978 edition of the catalogue mentions the Church of the Holy Trinity with no date.

9 Statement by Walter W. Timoshuk, Chair and President, Norton Simon Art Foundation, in an Op-Ed piece, "Mr. Lauder is Misinformed about our 'Adam' and 'Eve,'" *Wall Street Journal,* July 9, 2014. While it has been said that the 1931 Berlin sale catalogue specifically stated that the *Adam* and *Eve* were not part of the Stroganoff Collection, IFAR could find nothing to that effect in the copy of the auction catalogue we consulted in the New York Public Library, or in the 3 catalogue copies IFAR consulted in the Frick Art Reference Library.

10 He sold the *Eve* in 1970; *Adam* in 1971. Nancy Schwartz, who at the time was affiliated with the dealer Spencer Samuels, through whom the works were sold, told IFAR's Executive Director that the $800,000 was paid in money and artworks.

THE JUNE DECISION

In 2013, the Norton Simon Museum moved to dismiss von Saher's lawsuit (originally filed in 2007),[11] saying that it conflicted with and was therefore pre-empted by U.S. federal policy on restitution of Nazi-looted art. The district court agreed, citing an amicus brief filed in the U.S. Supreme Court at an earlier stage of the case by the U.S. Solicitor General, whose office is part of the Executive Branch. The district court held that "the United States' policy of external restitution and respect for the outcome and finality of the Netherlands' bona fide restitution proceedings ... directly conflicts" with von Saher's claims.

This June, the Ninth Circuit disagreed; von Saher's claims, it said, do not conflict with any federal policy because, despite the Solicitor General's statement to the contrary, the Cranachs were never subject to post-war internal restitution proceedings in the Netherlands, as Goudstikker's widow chose not to file a claim for them during the Netherlands' restitution process. Because she opted out, not only did they find an absence of conflict between von Saher's claims and federal policy, but the Majority believed her claims were "in concert with that policy." Von Saher, they said, "is just the sort of heir that the Washington Principles and the Terezin Declaration encouraged to come forward to make claims." The court carefully avoided judging the validity of the internal Dutch process but suggested that it had serious doubts about it.

Explaining its decision not to defer entirely to the Solicitor General's statement as the district court had done, the appellate court went so far as to suggest that the Solicitor General misunderstood "some of the facts essential" to von Saher's claims. Rather than implicating foreign policy, the panel said, the matter is a dispute between "private parties."

In remanding the case to the district court, however, the Ninth Circuit panel opened another line of argument – the Act of State Doctrine, asking the lower court to consider whether the Netherlands' post-war decision to return the Cranachs to Stroganoff constituted an action by a foreign sovereign within its borders such that U.S. courts would not sit in judgment of it (even if, in retrospect, it may have been based on incorrect information).

The Norton Simon Museum, the court suggested, may choose to argue that the restitution of the Cranachs to Stroganoff was an official act of the Dutch government that cannot be questioned in a U.S. court. Even so, there are certain exceptions to the Act of State Doctrine, including one for "purely commercial acts," an exception on which the Ninth Circuit has never ruled. Whether the transfer of the Cranachs to Stroganoff was a "sale," as von Saher asserts, or a restitution, is one of the facts in dispute, and a not insignificant one, given the Act of State Doctrine.

In its now denied petition for rehearing en banc, the Norton Simon argued that the decision violated the Executive Branch's exclusive power to determine foreign policy under the separation of powers doctrine of the U.S. Constitution. Rather than following the Solicitor General's statement as to what the U.S. policy is regarding restitution,

[11] The district court previously dismissed von Saher's claims in 2007, holding a California state statute of limitations for Holocaust-era looted art claims unconstitutional. *(Von Saher v. Norton Simon Museum of Art at Pasadena,* No. 07-2866-JFW-JTL, slip. op. (C.D. Cal. Oct. 18, 2007)) The Ninth Circuit affirmed in 2010, but remanded the case to allow von Saher an opportunity to amend her complaint. The California legislature later amended the statute at issue and explicitly made it applicable to pending cases. The revised statute was struck down by a district court in May 2012 in another restitution case, *Cassirer v. Thyssen-Bornemisza Collection Foundation,* but the Ninth Circuit reversed that decision last year. *(Cassirer v. Thyssen-Bornemisza Collection Found., 737 F.3d 613* (9th Cir. 2013)). It concluded that the new statute, unlike its predecessor, was silent on the matter of foreign affairs and therefore passed muster vis-à-vis the Constitution.

the court, the museum argued, erroneously substituted its own judgment as to U.S. policy.

In its request for rehearing, the museum relied heavily on the Dissenting Opinion, by Ninth Circuit Judge Wardlaw, as well as the earlier statement by the Solicitor General, who explained that "because the Netherlands 'conducted bona fide post-war internal restitution proceedings,' the U.S. has 'a substantial interest in respecting the outcome of that nation's proceedings'."

Quoting the Solicitor General, Judge Wardlaw concluded that the Cranachs "have already been the subject of both external and internal restitution proceedings." Von Saher's claims should have been barred, Wardlaw wrote, because, although Goudstikker's widow chose not to make a claim for the Cranachs in the 1950s, the paintings were "potentially" subject to the Netherlands' internal restitution process at the time. In addition, Wardlaw noted, in 1998 and again in 2004, von Saher made her own restitution claim. (In 2006, although defending the finality of The Hague Court of Appeals' decision against von Saher, the Dutch government returned 202 works still in its possession.) Von Saher's "attempt to recover the Cranachs in U.S. courts," Wardlaw wrote, "directly thwarts the central objective of U.S. foreign policy in this area: to avoid entanglement in ownership disputes over externally restituted property if the victim had an adequate opportunity to recover it in the country of origin." A key question was whether the claimant did or did not have that opportunity. The Majority in June believed she did not. With the denial of a rehearing, the Majority opinion now stands, unless reviewed and reversed by the U.S. Supreme Court.

"In addition to moral and legal principles, at stake is the ownership of two iconic sixteenth-century Northern Renaissance panel paintings ..."

THE STAKES

The stakes over the Cranachs are high – in addition to moral and legal principles, at stake is the ownership of two iconic sixteenth-century Northern Renaissance panel paintings created c.1530 that have hung in the Norton Simon collection since the 1970s. Decorative and stylized, the paintings exhibit the elegant lines and delicate treatment of nude figures in a landscape for which Lucas Cranach the Elder was known. It is one of approximately 31 versions of Adam and Eve painted by Cranach (or his Workshop) starting in 1510,[12] some showing the figures before the Fall, others, as here, just after, with the snake visible in the branches above Eve and the tree leaves barely covering the couple's nakedness. The enormous panels – each just over six feet high – would be the pride and joy of any collection.

As if to underscore the stakes, and the moral imperatives of restitution itself, the discussion spilled onto the pages of the *Wall Street Journal* on June 30,[13] when Ronald Lauder, President of the World Jewish Congress, Former Ambassador to Austria, Chairman of the Commission for Art Recovery (and former Board member of IFAR), wrote an Op-Ed piece chastising museums, including the Norton Simon, for effectively raising impediments to "responsible behavior" and resorting to "technical legal defenses" to fight claims by

12 The 1978 edition of the Cranach catalogue raisonné lists 31 Adam and Eve paintings by Cranach, a few of which are believed to be by his Workshop. See, Max J. Friedländer and Jakob Rosenberg, *The Paintings of Lucas Cranach* (Ithaca, New York: Cornell University Press, 1978), p. 187 and passim.

13 Ronald S. Lauder, "Time to Evict Nazi-Looted Art from Museums," *Wall Street Journal,* June 30, 2014.

Holocaust survivors and their heirs. He contrasted the Norton Simon's behavior with that of the Cummer Museum in Jacksonville, Florida, which recently "honored a claim by Ms. von Saher involving art from the same collection ..." The Norton Simon responded on July 9 with a *Wall Street Journal* Op-Ed of its own, written by its Chairman, Walter Timoshuk.[14] Timoshuk insisted that Lauder was wrong; the museum, he said, is not resorting to technical defenses, but had relied on and believes in the importance of respecting "the finality of the Netherlands' bona fide restitution process" in the 1960s. To that, the claimant, Marei von Saher, responded on July 25 with an Op-Ed of her own that said it was "time to give us back our Nazi-looted paintings."[15] The Norton Simon, she declared, "should stop wasting its charitable resources trying to cling to Nazi loot."

"As if to underscore the stakes, and the moral imperatives of restitution itself, the discussion spilled onto the pages of the *Wall Street Journal* on June 30, when Ronald Lauder ... wrote an Op-Ed piece chastising museums, including the Norton Simon, for effectively raising impediments to 'responsible behavior' ..."

FIGURE 4. JACQUES ADOLPHZ. DE CLAEUW. ***Vanitas,*** **1677. Oil on canvas, 44 ⅜ x 57 ⅜ in. Restituted to Marei von Saher from the Cummer Museum of Art and Gardens, Jacksonville, and returned to the museum as a partial gift and purchase. Photo: Cummer Museum.**

CUMMER MUSEUM SETTLEMENT

The settlement that Ronald Lauder applauded was announced through von Saher's attorney, Lawrence Kaye, on June 25. The Cummer Museum of Art and Gardens, he said, had amicably resolved a WWII claim by von Saher to a still life by Jacques Adolphz de Claeuw **(FIG. 4)**, with the Museum agreeing to restitute the painting, but expressing a desire to have it remain in its collection. In gratitude for the museum's actions, von Saher agreed to transfer the painting to the museum as a partial purchase and gift in memory of Jacques Goudstikker.

No doubt with the Norton Simon claim in mind, von Saher said that it was "heartening to see museums like the Cummer do the right thing ... We hope that the restitution of this work will lead other museums to act just as responsibly when faced with the discovery of Nazi-looted art in their collections."

— **S.F.** and **A.M.G.**

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14 See fn. 8.

15 Marei von Saher, "It's Time to Give Us Back Our Nazi-Looted Paintings," *Wall Street Journal,* July 25, 2014.

MATISSE'S *ODALISQUE* RETURNS HOME

Two years after it was recovered in Miami; twelve years after its theft was made public in 2002; and at least fourteen years after it was stolen from the Contemporary Art Museum of Caracas, Henri Matisse's *Odalisque with Red Pantaloons* **(FIG. 1)** has finally returned home.

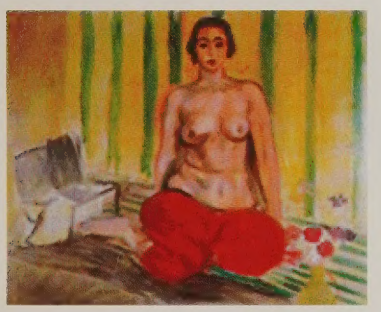

FIGURE 1. HENRI MATISSE. ***Odalisque with Red Pantaloons*, 1925. Oil on canvas, 60.5 x 73.7 cm. Stolen from the Caracas Museum of Contemporary Art and returned in July 2014. ©2014 Succession H. Matisse/ Artists Rights Society, New York.**

The painting, dating from 1925, the artist's so-called "decorative" period, arrived in Caracas from Miami on July 7 accompanied by a team of Venezuelan officials who took credit for the recovery that was, in fact, accomplished through an FBI sting operation in the U.S. According to one Venezuelan official, "it was another achievement of the Bolivarian revolution, of a government in touch with the arts."[1] Two weeks later, on July 22, after undergoing 10 days of conservation treatment to repair the tattered unpainted edges of the work (there was no damage to the painted surface), the painting was back on view in the museum, in its original frame – the star of a small temporary exhibition. Closely guarded, and displayed in a red booth, the Matisse was juxtaposed with the fake painting that replaced it and that fooled museum staff when it was stolen **(FIG. 2).**

The period from the painting's recovery in Miami to its return to Caracas was long – two years after recovery and 18 months after the sentencing of two criminals (see below). Notably, the return was not accompanied by a press release from the U.S. Attorney's office in the Southern District of Florida; nor was there a public "repatriation" ceremony. In fact, there were no photographs and no public statements *of any kind* from either the U.S. Department of State or Justice, only from Venezuelan officials, leading one to speculate that this was due to current tensions between the United States and Venezuela.

"The FBI in Miami executed that request by asking IFAR to undertake provenance research, which revealed a very complicated ownership history … but no concerns as to the work having been looted or stolen during the war or otherwise."

FIGURE 2. The recovered Matisse *Odalisque* (in the red booth on the left) displayed alongside the fake painting that replaced it,

During this holding period, the U.S. Attorney's office in Miami wanted to verify that there were no other possible claimants to the work – including a WWII-era ownership claim – that might affect the appropriateness of its return to Venezuela. The FBI in Miami executed that request by asking IFAR to undertake provenance research, which revealed a very complicated ownership history prior to its acquisition by the Caracas museum in 1981, but

[1] Comments by Culture Minister Fidel Barbarito, from the Bolivarian Republic of Venezuela (formerly the Republic of Venezuela until 1999), as quoted in *Today Online,* Wednesday, July 9, 2014.

no concerns as to the work having been looted or stolen during the war or otherwise.

THE THEFT AND SWITCH

The date of the painting's theft is still unknown, but it occurred as early as 1997 and no later than 2000. A 2002 cover story in *IFAR Journal* featured an interview with the then museum director, Rita Salvestrini, who told IFAR that she believed it was an inside job.[2] No one else, she said, could have had the necessary access.

The thieves replaced the painting with a fake of similar dimensions, bearing a signature in the lower left corner as in the original painting. Perhaps because the fake was attached to the *original* stretcher and frame, it continued to hang in the museum unrecognized as a fake by either staff or visitors! The authentic work, crudely stapled to a poor quality stretcher, circulated on the market – first in New York in the fall of 2000, then in Miami in 2001 and 2002 – aided by false documents purportedly signed by two former museum employees "authorizing" the sale from the museum.

An initial – unheeded – alarm about the theft was sounded by Wanda de Guebriant of the Matisse Archives in Paris, who recognized that the painting being circulated, and shown to her for expertise, was the actual Matisse. A second alarm was sounded months later by a Venezuelan art dealer living in Florida, who distributed an angry email in November 2002 protesting the sale of a major work from the museum's collection. After denying it had sold the work, the museum launched an investigation and discovered that the "masterpiece" on its wall was a fake. The story broke in the press, and the FBI was brought into the picture, but the painting went underground after December 2002.

THE STING

Nine years later, in 2011, the FBI Art Crime Team learned through a confidential informant that the Matisse was back on the market, and it initiated a "sting". Impersonating interested buyers, FBI agents began to negotiate a sale with the seller, a then 46-year-old Florida man –Pedro Antonio Marcuello Guzman – who, told them that his partner in Mexico had the work, which they would be willing to sell for about 20% of its estimated $3.7 million value.[3] Marcuello Guzman admitted to the undercover agents that he knew the work was stolen, although neither he nor his partner had committed the theft.

The undercover agents convinced Marcuello Guzman to have the painting brought to Miami. He reluctantly arranged for Maria Martha Elisa Ornelas Lazo, his partner's wife, to bring the painting to the U.S. and serve as courier. On July 16, 2012, she flew from Mexico City to Miami with the Matisse rolled up in a tube. The next day, the pair met with the FBI undercover agents posing as buyers. In a guest room in the Loews Miami Beach Hotel, the agents carried out their "sting," which was recorded on tape. After inspecting the painting and making an ostensible attempt to send a wire payment to the agreed-upon account, the agents arrested the pair. Two weeks later, they were indicted for knowingly violating the National Stolen Property Act, and in October, they pleaded guilty. They were sentenced on January 22, 2013 – Marcuello Guzman to 33 months and Ornelas Lazo to 21 months in prison, each followed by 3 years of supervised release.

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2 IFAR previously published two detailed articles about this theft and recovery. See, Sharon Flescher, "Art Theft-and-Switch: It's a Crime, but Not an Art," *IFAR Journal,* Vol. 5, no. 4 (2002/03), pp. 4-8, and "A Tale of Two Stolen Matisses," *IFAR Journal,* Vol. 13, no. 4, (2012/13), pp. 6-8.

3 See *United States v. Marcuello Guzman and Ornelas Lazo,* No. 12-cr-20559-DMM (S.D. Fla, filed July 18, 2012).

The recovery of the Matisse proved, once again, how difficult it is to market stolen art. Even with fake museum documents that fooled several people, the *Odalisque* could not be sold until 2012 – at a vastly reduced price – as part of an FBI sting.

The story of what happened to the Matisse from the time it went underground in December 2002 until it resurfaced in 2011 has not been made public. Nor have the exact circumstances surrounding its theft, although Ornelas Lazo confirmed to the undercover agents that the work was stolen by museum employees and that it was in her possession in Mexico for years. As far as the U.S. is concerned, however, the case is closed.

—S. F.

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THREE QUESTIONED REMBRANDTS RE-ENTER THE CANON: MORE TO COME

LISA DUFFY-ZEBALLOS AND SHARON FLESCHER*

In what has become an increasingly familiar reversal of fortune, three more paintings previously consigned to Rembrandt's Circle have recently been reinstated as works by the artist himself. The Director of the Rembrandt Research Project (RRP), Ernst van de Wetering, widely recognized as the world's leading authority on Rembrandt, announced this Spring that the *Portrait of Dirck van Os II* from the Joslyn Museum in Omaha **(FIG. 1),** the *Old Man in an Armchair* in London's National Gallery, **(FIG. 2),** and a Self-Portrait in Buckland Abbey, Devon **(FIG. 3),** all formerly attributed to anonymous followers of Rembrandt, are, in fact, authentic and will be included in the sixth and final volume of the *Corpus of Rembrandt Paintings,* scheduled for publication this year.[1] Van de Wetering told IFAR that the book will be launched at the Rijksmuseum in Amsterdam on October 5, and, he added, will include "many more and much more exciting reattributions."

Although all are single figure paintings of men, the newly announced Rembrandts are strikingly different. The Buckland Abbey *Self-Portrait,* dating from the mid-1630s, an exploratory stage of Rembrandt's career, shows the artist's early experiments in characterization and the depiction of light, while the two other paintings are from his mature period of the 1650s. Nevertheless, they, too, are a study in contrasts; the portrait of *Dirck van Os* painted tightly, and the *Old Man in an Armchair* executed in Rembrandt's late "rough manner." Despite these differences, the paintings' history as erstwhile Rembrandts follows the same trajectory, one shared by the swelling ranks of previously rejected paintings reinstated by the RRP under van de Wetering's direction.

IN AND OUT

The Joslyn portrait **(FIG. 1)** depicts an elderly, bearded man dressed in black and holding a wooden staff. The family crest on the wall showing two ox heads and a five-pointed star identifies him as a member of the van Os family of merchants. Near the crest, an inscription by a later hand further identifies him as "D. VAN OS [DIJCK-GRA]EF VAN D[E BEEMSTER]" or Dirck van Os de Jongere (1590-1668), who served from 1618 to 1666 as the *Dijkgraaf,* or administrator, of the Beemster Polder, a reclaimed region north of Amsterdam.

"Van de Wetering told IFAR that [Volume 6] will be launched at the Rijksmuseum in Amsterdam on October 5, and … will include 'many more and much more exciting reattributions'."

* Lisa Duffy-Zeballos, Ph.D., is Director of IFAR's Art Research Service. Sharon Flescher, Ph.D., is Executive Director, IFAR, and Editor-in-Chief of the *IFAR Journal.*

1 Rembrandt Research Project, *A Corpus of Rembrandt Paintings* (The Hague; Boston: M. Nijhoff, 1982). Volume 6: *Rembrandt's Paintings Revisited,* will be published by Springer (Dordrecht; New York).

FIGURE 1. REMBRANDT VAN RIJN, *Portrait of Dirck van Os II,* 1658. Oil on canvas. 113.5 x 88.7 cm. Joslyn Museum, Omaha, Nebraska. Museum purchase, 1942.30. Shown after restoration.

FIGURE 3. REMBRANDT VAN RIJN, *Self-Portrait, Wearing a White Feathered Bonnet,* 1635. Oil on panel. 90.5 x 71.8 cm. Buckland Abbey, Devon. Inv. no. 810136. Photo: National Trust Images.

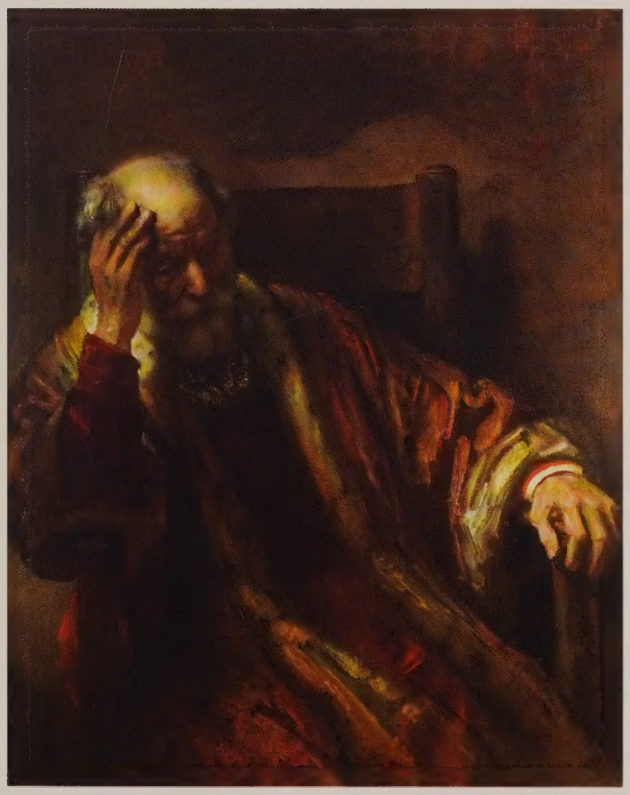

FIGURE 2. REMBRANDT VAN RIJN (?), *Old Man in an Armchair*, 1652. Oil on canvas. 111 x 88 cm. National Gallery, London. Access. no. NG6274. Photo: National Gallery, London / Art Resource, NY.

The portrait has been in the Joslyn's collection for more than 70 years. It was purchased as an authentic Rembrandt from a New York gallery in 1942, when its attribution to the artist seemed secure, having been included in the catalogues raisonnés of the artist by Cornelis Hofstede de Groot, Wilhelm Valentiner, and Abraham Bredius.[2] By the mid-1960s, however, the painting's attribution came under scrutiny by a new generation of art historians, who had grown alarmed at the number of paintings that had been attributed to Rembrandt—Valentiner listed almost 700—many of which were widely suspected of being by his studio assistants and followers.

The reassessment of Rembrandt's *oeuvre* gave rise to the creation in 1968 of the Rembrandt Research Project, a Dutch initiative comprised of specialists charged with producing a comprehensive catalogue of Rembrandt's paintings, and, in van de Wetering's words, freeing "his oeuvre from the accretions that were thought to have disfigured the image of Rembrandt the painter."[3] All paintings attributed to Rembrandt—even unquestioned ones—would be viewed in person by the committee and subjected to modern scientific examination. In its early years, the RRP was notoriously restrictive; 100 works were downgraded in only the first three volumes of the *Corpus*, covering Rembrandt's paintings up to 1642.[4] While some were declared to be fakes, most were reassigned to lesser-known painters of Rembrandt's studio.

"Under van de Wetering's direction, the RRP entered into a decidedly more expansionist phase of Rembrandt attributions."

As a work from the 1650s, the Joslyn portrait had not yet been *officially* rejected by the RRP, but it seemed almost certain that it would be. Serious doubts about it had been raised as early as the 1960s; Kurt Bauch omitted it from his 1966 catalogue raisonné, and Horst Gerson, in his 1969 annotated edition of Bredius' catalogue, declared the painting's "attribution to Rembrandt not at all convincing."[5] In 1982, two RRP committee members examined the painting in Omaha, but their opinion was not encouraging, asserting that the painting's heavy restoration and extensive overpainting made it impossible to form an opinion about its authenticity. Without even waiting for the RRP to deliver the blow, the museum's curators quietly demoted the *Portrait of Dirck van Os II* to "Circle of Rembrandt" in 1987. It continued to hang in the galleries under its new attribution until 1999, when it was moved to the reserve collection.

The *Old Man in an Armchair* **(FIG. 2)** shared a similar fate. Signed and dated 1652, the painting depicts a balding old man in a fur-lined robe slumped in a straight-backed chair, his right hand at his temple in an attitude of melancholy contemplation. Acquired in 1957, the painting was widely praised for its bold handling of paint, sensitive characterization, and dramatic mood. At the time of its purchase, no one seriously questioned the Rembrandt attribution; Hofstede de Groot, Bredius, and Bauch had all included it in their respective catalogues raisonnés. Several scholars, notably Kenneth Clark, the former director of the National Gallery, regarded the painting, with its rich tonality and layered glazes, as an important example of the influence of Venetian painting, in particular Tintoretto, on Rembrandt's late work.[6] Gerson remained unconvinced. In his revised edition of Bredius' catalogue, he complained that the painting's "overall structure" and, in particular, the execution of the right

2 Cornelis Hofstede de Groot, *A Catalogue Raisonné of the Works of the Most Eminent Dutch Painters of the Seventeenth Century,* Vol. 6 (London: Macmillan & Co, 1916): p. 316, no. 664, Wilhelm Valentiner, *Rembrandt, des Meisters Gemälde* (Stuttgart; Leipzig: Deutsche Verlags-Anstalt, 1909): p. 501, and Abraham Bredius, *The Paintings of Rembrandt* (Vienna: Phaidon-Verlag, 1936): no. 315.

3 See Ernst van de Wetering, "Thirty Years of the Rembrandt Research Project: The Tension Between Science and Connoisseurship in Authenticating Art," *IFAR Journal,* Vol. 4, no. 2 (2001), p. 14, based on an *IFAR Evening* talk on Feb. 20, 2001.

4 See Martin Bailey, "Rembrandt Research Project Ended," *The Art Newspaper* (Feb. 2011).

5 Abraham Bredius, *Rembrandt: The Complete Edition of the Paintings* by A. Bredius Revised by H. Gerson (London: Phaidon, [1969] 1971), p. 574, no. 315. See also Kurt Bauch, *Rembrandt Gemälde* (Berlin: W. de Gruyter, 1966). Neither Gerson nor Bauch had viewed the *Portrait of Dirck van Os* in person.

6 Kenneth Clark, *Rembrandt and the Italian Renaissance* (London: J. Murray, 1966), p. 130.

hand were "very weak, and even contradictory,"[7] since the *left* hand and sleeve were painted in a "superficially powerful and impressionistic" style that contrasted with the rough painterly execution of the right. Such patchwork, Gerson concluded, was inconsistent with Rembrandt's "autograph portraits from this great period."

In the general climate of doubt prevailing in the late 1960s, curators at the National Gallery came to agree with Gerson. Moreover, paint analysis revealed the heavy use of red lake pigments and glazes in the sitter's costume and hand, atypical of Rembrandt's autograph paintings. On this basis, the National Gallery demoted the *Old Man in an Armchair* to an anonymous "Follower of Rembrandt" in 1969. Like the *Portrait of Dirck van Os,* the *Old Man in an Armchair* was never officially reviewed by the RRP, but it seemed inevitable that the committee would downgrade the painting.

"Unlike the previous two paintings, Buckland Abbey's *Self-Portrait* from 1635 *was* officially downgraded by the RRP in 1989."

Unlike the previous two paintings, Buckland Abbey's *Self-Portrait* **(FIG. 3)** from 1635 *was* officially downgraded by the RRP in 1989, in Volume 3 of the *Corpus* (No. C92).[8] The half-length panel depicts Rembrandt, aged 29, wearing a black plumed cap and a fur cape with a gold embroidered fringe. Formerly in the collection of the Princes of Liechtenstein, the painting was in a private collection in England in 1972 when it was examined by four members of the RRP, one of whom was van de Wetering himself. The committee's decision to downgrade the painting was based mainly on stylistic differences from Rembrandt's known works, especially evident in the "careful though plastically ineffective painting (in the face)," which was inharmoniously combined with the "coarse and scarcely suggestive treatment of the clothing."[9] The committee also found the 1635 date, written on both the recto and the verso, to be problematic, noting that the painting was more consistent stylistically with Rembrandt's works of 1638. Although Gerson and others had tentatively attributed the painting to Govaert Flinck, one of Rembrandt's studio assistants, the RRP assigned it instead to an unknown member of his workshop.

NEW DIRECTIONS FOR THE RRP

By the early 1990s the RRP's hegemony began to wane, as some art historians began accusing it of being overzealous in downgrading purported "Rembrandts". Within the RRP itself, van de Wetering, the youngest member of the team, frequently disagreed with the consensus opinion of his elder colleagues. Moreover, with the project entering its third decade and the *Corpus* still only half complete, van de Wetering insisted that the chronological methodology employed by the RRP in the first three volumes was inadequate for evaluating Rembrandt's later works,[10] and proposed that going forward the committee proceed thematically. For the four older members of the RRP, several of whom had already effectively retired from active participation in the committee, this radical change in direction, requiring reevaluation of some works already dealt with in previous volumes, was too much.

In 1993, in an open letter to the editor of the *Burlington Magazine,* Bob Haak, Josua Bruyn, Simon Levie, and Pieter van Thiel announced their withdrawal from the RRP. Their abrupt departure left van de Wetering in charge of the project, tasked with overseeing the completion of the remaining volumes of the *Corpus.* Under his direction, the RRP entered into a decidedly more expansionist phase of Rembrandt attributions. The next two volumes of the catalogue, Volume 4 dealing with

7 Gerson, op cit. p. 570, no. 267.

8 *Corpus,* Vol. 3, *1635-1642,* no. C92

9 *Ibid.*

10 Ernst van de Wetering, "Preface: The Rembrandt Research Project: Past, Present, Future," *Corpus,* Vol. 4, *Self-Portraits* (New York: Springer, 2005): pp. ix-xv.

Rembrandt's self-portraits and Volume 5 devoted to the small-scale history paintings, reinstated several previously questioned works, including *Laughing Man* (Mauritshuis), the *Polish Rider* (Frick Collection), and *Tobias and His Wife* (Museum Boijmans van Beuningen).

Since the publication of Volume 5 in 2010, van de Wetering has added even more works to Rembrandt's oeuvre, including the still-controversial *(Self) Portrait of Rembrandt as a Young Man* (Metropolitan Museum of Art) **(FIG. 4),**[11] which will be included in the final, albeit abridged, sixth volume of the *Corpus.* Originally intended to cover late portraits and large-scale history paintings, van de Wetering announced in 2011 that the last volume would, instead, be a "summary catalogue" listing all of the approximately 300–350 paintings that the RRP accepts as by Rembrandt, with more detailed discussions of the 80 paintings not covered in the previous five volumes of the *Corpus.*[12] With the RRP winding down, van de Wetering stepped up his in-person examinations of the unpublished works and those paintings previously rejected by the RRP that he felt merited another look.

FIGURE 4. REMBRANDT VAN RIJN (?), *(Self) Portrait of Rembrandt as a Young Man,* ca. 1630. Oil on oak panel. 8 ⅝ x 6 ½ in. (21.9 x 16.5 cm). Evander B. Schley bequest. Metropolitan Museum of Art, New York, Access. no. 53.18. Photo: Art Resource, NY.

BUCKLAND ABBEY *SELF-PORTRAIT*

The earliest indication that the RRP's opinion of the Buckland Abbey *Self-Portrait* might be changing came with the publication of Volume 4 of the *Corpus* in 2005. Although Volume 4 was originally intended to cover only self-portraits painted after 1642, the need to revise some of the RRP's previous opinions compelled the inclusion of self-portraits published in earlier volumes. Although van de Wetering did not reverse the demotion of the Buckland Abbey *Self-Portrait* at that time, he noted that the painting's 1635 date, which the RRP had claimed was too early, was not inconsistent with its style. In fact, the *Self-Portrait* is closely related to two other self-portraits from 1634, the *Self-Portrait with Shaded Eyes* (Private Collection, NY) **(FIG. 5)** and *Self-Portrait in Motion* (Gemäldegalerie, Staatliche Museen zu Berlin) **(FIG. 6),** which also depict the artist's face in shadow. Together, the three paintings show that around 1634/1635 Rembrandt had "developed a particular formula for the execution of a partially shadowed face."[13] He further argued that the x-radiographs indicated that the composition of the *Self-Portrait* had been reworked, inconsistent with a copyist. In light of this new information, van de Wetering indicated that further investigation could prove that the painting was indeed by Rembrandt.

11 See Sharon Flescher, "Is this Painting by Rembrandt?", *IFAR Journal,* Vol. 12, no. 3 (2011), pp. 13-16, and Ernst van de Wetering "The Rembrandt Research Project: Reflections, Revelations, Reversals," *IFAR Journal,* Vol. 13, no. 1-2 (2012), pp. 13-23. The latter is based on a talk van de Wetering gave at an *IFAR Evening* on March 10, 2011.

12 Among the latter are some of Rembrandt's most important paintings, including the *Syndics of the Drapers' Guild* (Rijksmuseum), the *Return of the Prodigal Son* (The Hermitage), and the *Jewish Bride* (Rijksmuseum)

13 *Corpus,* Vol. 4, *Self-Portraits,* p. 234.

FIGURE 5. REMBRANDT VAN RIJN, ***Self-Portrait with Shaded Eyes***, 1634. Oil on panel. 91 x 55.1 cm. Private Collection, NY.

FIGURE 6. REMBRANDT VAN RIJN, ***Self-Portrait in Motion,*** 1634. Oil on panel. 58.3 x 47.4 cm. Inv. 810. Gemäldegalerie, Staatliche Museen, Berlin. Photo: bpk, Berlin / Staatliche Museen / Joerg P. Anders / Art Resource, NY.

In 2010 the estate of Lady Samuel of Wych Cross donated the *Self-Portrait* to the National Trust, which transferred it to Buckland Abbey in Devon. With the painting on public view, van de Wetering re-examined it in 2013. He confirmed his favorable connoisseurship opinion and recommended extensive technical examination of the materials. Tests carried out at the Hamilton Kerr Institute in Cambridgeshire revealed that both the signature and 1635 date were contemporaneous with the painting and not later additions as the RRP had contended. Paint sampling and analysis further revealed that the pigments used in the *Self-Portrait* were consistent with those used by Rembrandt and his assistants, and reflectography and x-rays showed even more clearly the pentimenti and compositional changes that took place as the work was being painted. When presented with the results of the cleaning and scientific examination, van de Wetering confirmed that the painting was by Rembrandt.

THE REMBRANDTS IN THE STOREROOM

The RRP's highest priority for the sixth volume of the *Corpus* is the publication of the approximately 80 paintings, most from Rembrandt's late period, that have yet to appear in any of the earlier volumes. This effort took van de Wetering to Omaha in 2010 to examine the *Portrait of Dirck van Os,* which he knew only from photographs. Although it was in poor condition, disfigured with excessive overpainting, notably in the sitter's costume, and severely darkened under a heavy varnish, van de Wetering detected aspects of Rembrandt's characteristic brushstrokes, layering of paint, and use of light effects in the figure's face.

At his suggestion, in 2012 the Joslyn Museum sent the painting to Amsterdam for conservation by Martin Bijl, the former Chief of Conservation at the Rijksmuseum and an expert on Rembrandt's materials. During the year-long restoration, Bijl carefully differentiated Rembrandt's brushstrokes from the areas of repainting by later restorers, some dating as far back as the seventeenth century, painstakingly removing the fussy lace details in the sitter's starched collar and cuffs, the metal tip and braided

red cord on the wooden staff, and the decorative gold cross and chain draped over his shoulders **(FIG. 7).**[14] The resulting portrait exhibits Rembrandt's characteristically subtle tonality, and shows the elderly van Os wearing a sober costume befitting a man of his age and social position. With the news that van de Wetering plans to reinstate the painting among Rembrandt's mature works, the painting was reinstalled in the museum's Dutch galleries in May, after lingering in obscurity for decades.

FIGURE 7. REMBRANDT VAN RIJN, ***Portrait of Dirck van Os II,*** 1658. Joslyn Museum. Shown before restoration in 2012. Compare with Fig. 1.

Whereas the rejection of the *Portrait of Dirck van Os* was primarily a matter of overpainting and poor conservation preventing the "real" Rembrandt from revealing itself, the demotion of the National Gallery's *Old Man in an Armchair,* van de Wetering argues, resulted from a misreading of it as a *portrait* rather than a character study—a *tronie.* Rembrandt's accepted portraits from the early 1650s, including the *Portrait of Jan Six* (Six Foundation, Amsterdam) and the *Portrait of Nicolaes Bruyningh* (Gemäldegalerie, Kassel), follow standard seventeenth-century portrait conventions in reproducing a true likeness. The *Old Man in an Armchair* is not a portrait of a specific individual, however, but a character type. Therefore, a more appropriate comparison would be with another figural study from this period, such as Rembrandt's *Young Girl at a Window* (Nationalmuseum, Stockholm) from 1651 **(FIG. 8).** In a recently published article, van de Wetering contends that "the difference in execution between" the girl's two hands "is as great as that between the hands of the old man [from the National Gallery, London]." In fact, he argues, "the differentiation in smooth and rough

FIGURE 8. REMBRANDT VAN RIJN, ***Young Girl at the Window,*** 1651. Oil on canvas. 78 x 63 cm. Nationalmuseum, Stockholm. Photo: Foto Marburg / Art Resource, NY.

[14] The cartouche (upper right) bearing the van Os coat of arms, also a later addition, was retained for its historical significance in identifying the sitter.

brushwork" evident in both paintings is "typical of Rembrandt after 1650."[15] Moreover, the artist's emulation and assimilation of Venetian painting in the *Old Man in an Armchair* represents a "bold step [that] can only be expected from a master, not a pupil or imitator," which argues convincingly for Rembrandt's authorship.

Unlike the Joslyn Museum and Buckland Abbey, which lost little time in reinstating their paintings to a place of honor, the reaction to van de Wetering's acceptance of the *Old Man in an Armchair* has been curiously muted. The National Gallery, London has not changed its attribution of the painting from "Follower of Rembrandt" on its website, and a museum spokeswoman informed *The Guardian* that it did not intend to include the painting in the upcoming exhibition, *Rembrandt: The Finest Years,* scheduled to open on October 15.[16] The National Gallery's reaction echoes the chilly response from the Metropolitan Museum that greeted van de Wetering's announcement in 2011 that he intended to include the Met's *Portrait of Rembrandt as a Young Man* **(FIG. 4)** in the final volume of the *Corpus.* Three years on, that painting is still listed on the Met's website as "Style of Rembrandt"; nor is it on view. Whether this will be the fate of the National Gallery's *Old Man in an Armchair* as well, remains to be seen.

15 Ernst van de Wetering, "*Old Man in an Armchair* Re-attributed to Rembrandt," *The Burlington Magazine* (June 2014), pp. 382-84.

16 Mark Brown, "Rembrandt Expert Urges National Gallery to Rethink Demoted Painting," *The Guardian* (May 23, 2014).

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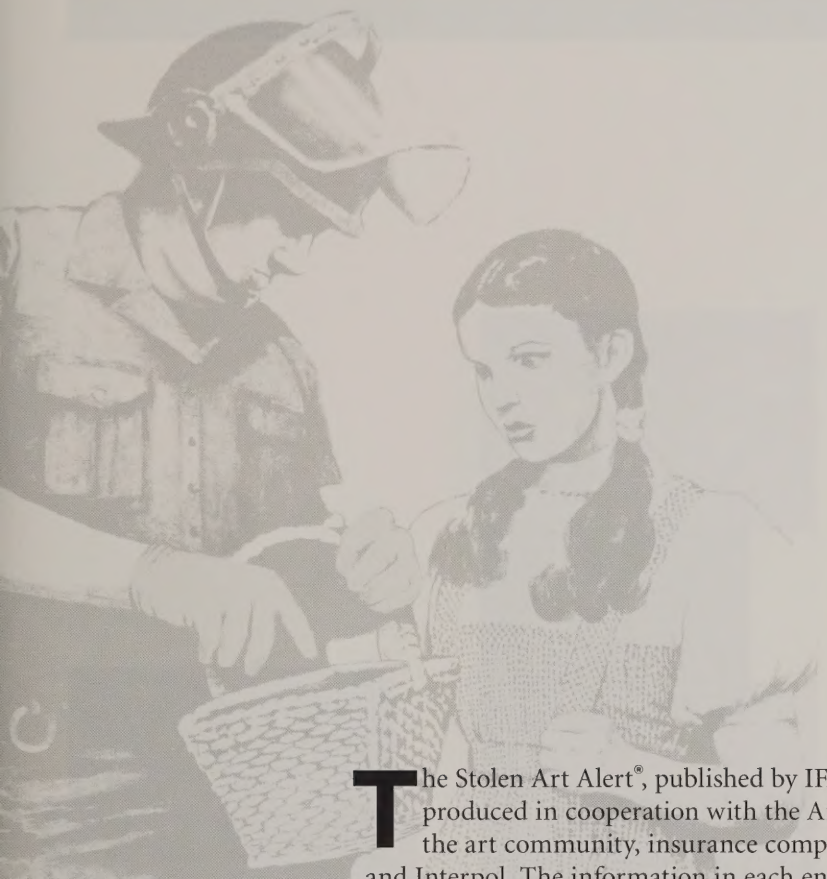

The Stolen Art Alert®, published by IFAR since 1977, is now produced in cooperation with the Art Loss Register (ALR), the art community, insurance companies, police, the FBI, and Interpol. The information in each entry is supplied by the owner and/or insurance companies to the ALR, police, the FBI, Interpol, and others, and IFAR does not accept responsibility for, nor make any representations with respect to, accuracy or authenticity.

Most items in this publication are registered in the database of the Art Loss Register, which has an office in London, England at First Floor, 63-66 Hatton Garden, London EC1N 8LE.

The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

Anyone wishing additional information should contact the ALR at 44.207.841.5780. From the U.S., add the prefix 011.

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STOLEN ART ALERT®

STOLEN ART*

PAINTINGS

The following five paintings were stolen from a private residence in London, England on November 25, 2013. *L14.319:

1. **PIETER JANSZ. QUAST** (Dutch, 1606-1647). ***Figures Playing Cards in an Interior.*** Oil on panel. 32.38 x 43.18 cm (12 ¾" x 17").

1

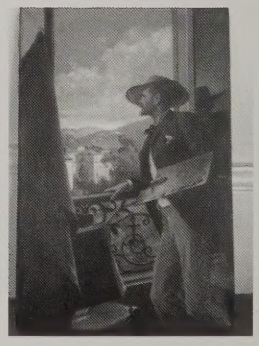
2. **SALVATOR ROSA** (Italian, 1615-1673). ***Landscape,*** 1675. Oil on canvas. 45.72 x 64.14 cm (18" x 25 ¼").

2

3. **Unknown Artist.** ***Christ and the Woman of Canaan,*** 1670. Oil on canvas. 46.99 x 56.52 cm (18 ½" x 22 ¼").

3

4. **Unknown Artist** (Continental School). ***Portrait of an Artist at a Window,*** 1884. Oil. 40.64 x 26.67 cm (16" x 10 ½").



4

5. **Unknown Artist** (Roman School, 17th century). ***St. Jerome with the Lion.*** Oil on canvas. 19.68 x 14.6 cm (7 ¾" x 5 ¾").

5

**Numbering for the year 2014 Cumulative Index of Stolen Art begins with this issue.*

6

The following eight paintings were stolen from a private residence in Lons le Saulnier, France on March 6, 2014. *L14.359:

6. **OSIAS BEERT, The Elder** (Flemish, 1580-1624). ***Still Life.***
Oil on canvas. 69.99 x 96.49 cm (approx. 24 ¾" x 38").

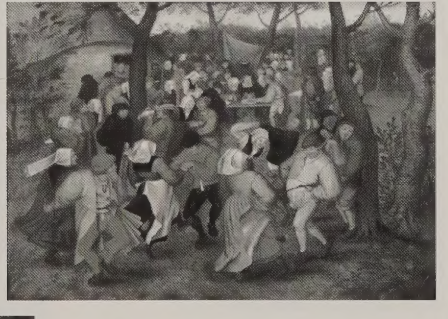
8

JAN BRUEGHEL, The Elder (Flemish, 1568-1625):

7. ***Landscape with Travelers,*** 1611.
See color photo on inside back cover.

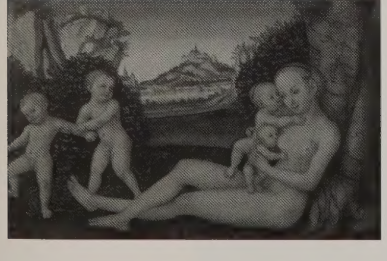
8. ***River Scene.*** Oil on copper.
14.6 x 21.11 cm (approx. 5 ¾" x 8 ¼").
Stamped "Pieter Stas" on the verso.

9. ***Woodland Landscape.***
Oil on copper. 10.69 x 16.99 cm (approx. 4 ¼" x 6 ¾").



10

10. **PIETER BRUEGHEL II** (Flemish, 1565-1636). ***Wedding Dance.***
Oil on panel. 39.5 x 56.49 cm (approx. 15 ½" x 22 ¼").



11. **LUCAS CRANACH, The Younger** (German, 1515-1586). ***Charity.***
Oil on panel. 48.21 x 75.01 cm (approx. 19" x 29 ½"). Signed with the artist's monogram.

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BALTHASAR VAN DER AST (Dutch, 1594-1657):

12. ***Still Life.*** Oil on panel. 35.99 x 67.01 cm (approx. 14 ¼" x 26 ¼").

12

13. ***Still Life.*** Oil on panel. 35.99x 67.01 cm (approx. 14 ¼" x 26 ¼").

13

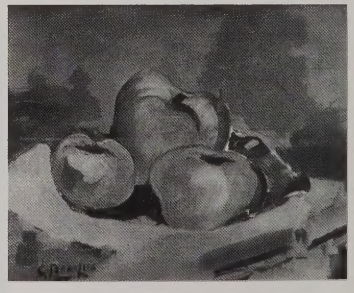
The following four paintings were stolen from a private residence in Nice, France on August 13, 1989. *L14.412. See also item no. 41 below:

14. **RAOUL DUFY** (French, 1877-1953). ***Red Orchestra,*** 1940. 46 x 38 cm (approx. 18 ¼" x 15").

14

GEORGES BRAQUE (French, 1882-1963):

15. ***Still Life with Apples and Knife,*** 1953. Oil. 19 x 34.01 cm (approx. 7 ½" x 13 ¼").



15

16. ***Yellow Basket,*** 1945. See color photo on inside back cover.

17. **ALBERT MARQUET** (French, 1875-1947). ***Le port de Collioure,*** 1940. See color photo on inside back cover.

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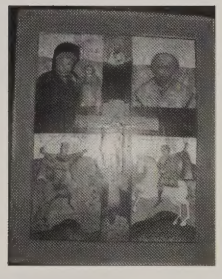
The following eight paintings were stolen from a private residence in Cologne, Germany on January 24, 2014. *L14.177. See also item nos. 45, 46, and 53 below:

18

18. **Unknown Artist.** ***Angel*** (18th century). Painting with a Slavonic inscription in a wooden trefoil frame. 40.64 x 25.4 cm (16" x 10").

19

19. ***Christ*** (18th century). Painting on panel with a Slavonic inscription. 31.75 x 27.94 cm (12 ½" x 11").

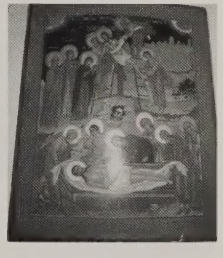


20

20. ***The Crucifixion,*** c. 1750. Painting on panel with a Slavonic inscription. 31.75 x 27.94 cm (12 ½" x 11").

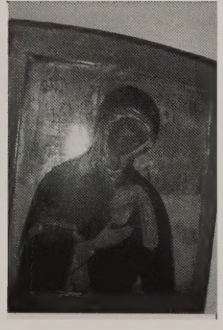
21

21. ***The Crucifixion*** (17th century). Enamel. 40.01 x 30 cm (approx. 15 ¾" x 11 ¾").



22

22. ***The Entombment of Christ.*** (c. 1800?). Painting on panel with a Slavonic inscription. 31.75 x 27.94 cm (12 ½" x 11").



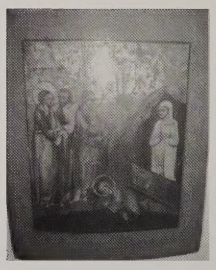
23

23. ***Madonna*** (18th century). Painting on panel with a Slavonic inscription. 31.75 x 27.94 cm (12 ½" x 11").

24. ***Mary and Jesus Surrounded by Saints,*** c. 1700. Painting on panel. 45.72 x 33.02 cm (18" x 13").

24

25. ***The Resurrection.*** Painting on wood panel with a Slavonic inscription. 31.75 x 27.94 cm (12 ½" x 11").



25

The following two paintings by **EDGAR BUNDY** (English, 1862-1922) were stolen from a private residence in Curepe, Trinidad on March 7, 2014. *L14.554:

26

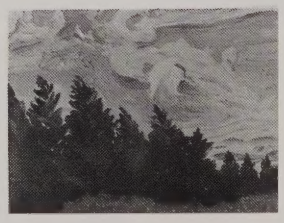
26. ***An Old Time Yarn.*** Oil on canvas. 35.56 x 25.4 cm (14" x 10").

27. ***Weighting the Spoils.*** Oil on canvas. 35.56 x 25.4 cm (14" x 10").

27

---

28. **C. H. B.** (Canadian, 20th century). ***Wind in the Pines,*** 1940. 50.8 x 60.96 cm (20" x 24"). *L14.248. Stolen from the Faculty of Medicine building at the University of Toronto between 2002 and 2012.



28

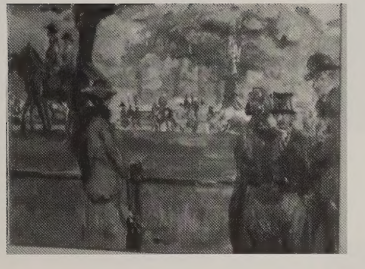
29. **AVRAHAM BLUE** (contemporary). ***Untitled (Cloud Painting).*** Oil on canvas. 75.01 x 124.99 cm (approx. 29 ½" x 49 ¼"). Signed l/r with the Hebrew character "Aleph." Signed l/l: Blue. *L14.331. Stolen from the Israel Bible Museum in Safed, Israel on February 16, 2014.

29

STOLEN ART (cont.)

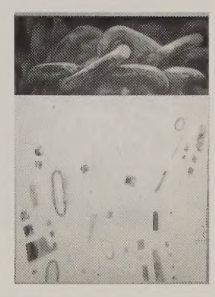
30

30. **ARTHUR ALFRED DAVIS** (English, 1824-1893). ***At Bay,*** 1904. Oil on canvas. 49.99 x 75.01 cm (approx. 19 ¾" x 29 ½"). *L14.551. Stolen from a gallery in Stamford, England on February 1, 2014.



31

31. **ISAAC ISRAELS** (Dutch, 1865-1934). ***Bois de Boulogne.*** Oil on canvas. Signed l/l. 40.01 x 59.99 cm (approx. 15 ¾" x 23 ½"). *L14.305. Stolen from a private residence in Amsterveen, The Netherlands on February 18, 2014.

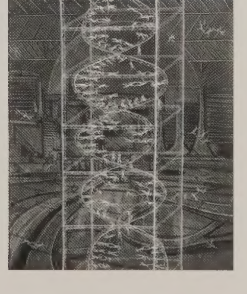


32

32. **PEGGY NIÑO** (American, contemporary). ***Sink or Swim,*** 2010. Oil on paper. 78.74 x 58.42 cm (31" x 23"). Ed. no. 1. Inv. No. 110558. *L14.316. Stolen from Midland College, Midland, TX on February 18, 2014.

33

33. **EMIL NOLDE** (German-Danish, 1867-1956). ***Christ at Emmaus,*** 1904. Oil on canvas. 94.01 x 87 cm (approx. 37" x 34 ¼"). *L14.375. Part of an altarpiece. Stolen from the Ølstrup Church near Ringkøbing, Denmark on March 11, 2014.



34

34. **DOUGLAS PEREZ CASTRO** (Cuban, born 1972). ***Information,*** 2006. Oil on canvas. 140 x 119.99 cm (approx. 55 ¼" x 47 ¼"). *L14.179. Stolen from a business in Oosterhout, The Netherlands on September 1, 2013.

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35. **MARGARET MORRIS** (English, 1891-1980). ***Ballet Dancer,*** c. 1920. Oil on board. 71.12 x 60.96 cm (28" x 24"). Signed l/r. *L14.424. Stolen in Norwich, England on September 2, 2013.

35

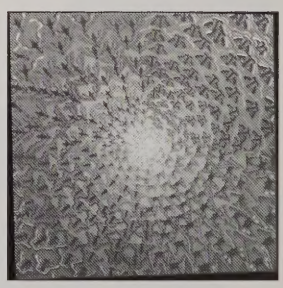
36. **PAUL ROBERTS** (Welsh, born 1948). ***Rainy Day,*** 2005. Oil on canvas. 91.44 x 121.92 cm (36" x 48"). *L14.264. Stolen from a New York gallery on October 15, 2013.

36

37. **Unknown Artist** (Virginia painter) (American, 20th century). ***Lewiston Church,*** 1950. Oil on board. 53.34 x 60.96 cm (21" x 24"). *L14.555. Stolen from a warehouse in Crestwood, MO on March 9, 2014.

37

38. **PAVAL ZEHNBACHT** (Russian, born 1950). ***Butterflies,*** 2010. Painting on canvas. 119.99 x 119.99 cm (approx. 47 ¼" x 47 ¼"). *L14.391. Stolen in transit in Haifa, Israel on March 14, 2014.



38

STOLEN ART (cont.)

WORKS ON PAPER

The following two works on paper by **PALMER C. HAYDEN** (American, 1890-1973) were stolen from the Museum of African American Art in Los Angeles, CA on April 10, 2014. *L14.548:

40

39. ***African Dancers,*** 1932. See color photo on inside back cover.

40. ***African Dancer,*** 1932. Watercolor on paper. 33.02 x 26.67 cm (approx. 13" x 10 ½"). Signed l/r. With a museum label on the verso.

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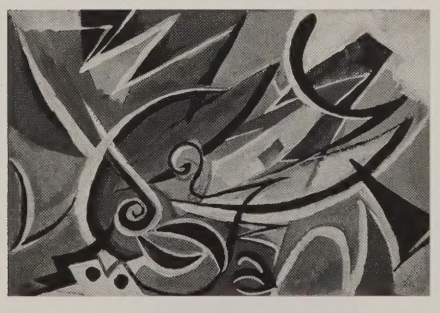
41. **PAUL SIGNAC** (French, 1863-1935). ***Lezardrieux,*** 1927. See color photo on inside back cover.



42

42. **ERNST WILHELM NAY** (German, 1902-1968). ***Untitled,*** 1949. Gouache and watercolor on paper. 26.7 x 39 cm (approx. 10 ½" x 15 ¼"). *L14.128. Stolen at the Art Cologne Fair in Germany between November 11 and November 17, 1993.

PRINTS, LITHOGRAPHS

43. **BANKSY** (English, contemporary). ***Stop and Search,*** 2007. Screenprint on paper. 76.5 x 57.51 cm (approx. 30" x 22 ½"). Ed no. 71/500. *L14.362. Stolen from a private residence in London, England on February 27, 2014.

43

PHOTOGRAPHS

44. **ROBERT RAUSCHENBERG** (American, 1925-2008). ***Chinese Lion Sculpture with Power Lines,*** 1982. Photograph. 73.66 x 71.12 cm (29" x 28"). *L14.443. Stolen from Johns Hopkins University, Baltimore, MD on March 7, 2014.

44

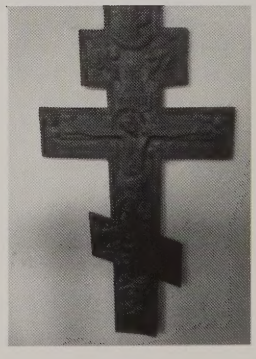
SCULPTURES

The following two items were stolen from a private residence in Cologne, Germany on January 24, 2014. *L14.177. See also item nos. 18-25 and 53:

45. **KARL-HEINZ ENGELIN** (German, 1924-1986). ***Abstract.*** Bronze. 40.01 x 30 cm (approx. 15 ¾" x 11 ¾").

46. **Unknown Artist.** ***Cross.*** Bronze with a Slavonic inscription. 40.01 x 30 cm (approx. 15 ¾" x 11 ¾").

45



46

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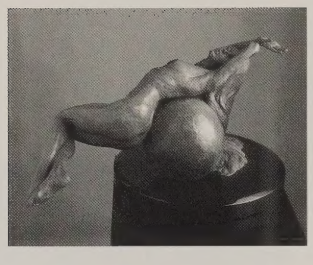
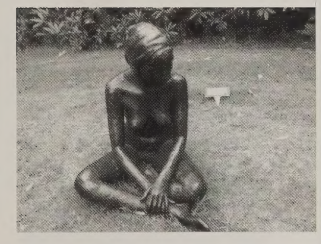
STOLEN ART (cont.)



47

47. **PAIGE BRADLEY** (American, contemporary). ***Autumn,*** 2013. Bronze. 15.24 x 40.64 cm (6" x 16"). Ed no. 41/75. *L14.452. Stolen from a store in Washington, DC on March 13, 2014.



48

48. **JENNY WYNNE JONES** (English, contemporary). ***Beth,*** 2013. Bronze and resin. 27 x 19.99 x 19.99 cm (approx. 10 ½" x 7 ¾" x 7 ¾"). *L14.268. Stolen from a private residence I Surrey, England on December 1, 2013.

49

49. **JOHN KEARNEY** (American, born 1924). ***Goat,*** c. 1965. Steel. 121.92 x 121.92 x 60.96 cm (48" x 48" x 24"). *L14.243. Stolen from a private residence in Mamaroneck, NY on July 1, 2010.

50

50. **FRITZ KLIMSCH** (German, 1870-1960). ***Taenzerinnen,*** 1923. Bronze. 30 x 13 x 10.01 cm (approx. 11 ¾" x 5 ¼" x 4"). With a monogram in the plinth; stamped by "Noack, Berlin"; catalogue raisonné: Braun 1/5. *L14.440. Stolen from a gallery in Münster, Germany on March 4, 2014.

51

51. **SHIRLEY MORRISON** (American, born 1920). ***Madonna and Child,*** 2005. Bronze. 88.9 x 50.8 x 33.02 cm (35" x 20" x 13"). *L14.352. Stolen from St. Georges Church, Colchester, Essex, England on February 16, 2014.

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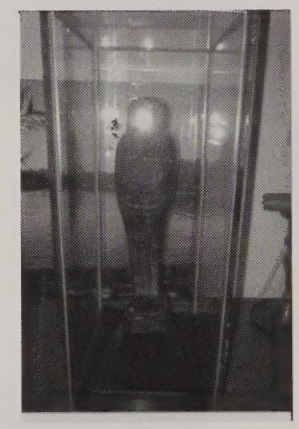
52. **KURT SCHWITTERS** (German, 1887-1948). ***Snake Stick.*** See color photo on inside back cover.

EGYPTIAN ANTIQUITIES

53. ***Horus*** (Egyptian, 18th Dynasty). Wood. 23.01 x 5.99 x 4.01 cm (approx. 9" x 2 ¼" x 1 ½"). *L14.177. Stolen from a private residence in Cologne, Germany on January 24, 2014. See also item nos. 18-25 and 45-46 above.



53

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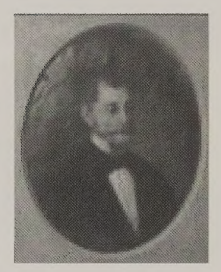
Contact: Steven J. Braun, Esq. ▣ sbraun@krigelandkrigel.com

STOLEN ART (cont.)

The following 70 paintings and works on paper were reported stolen from the collection of the Museo Nacional de Bellas Artes in Havana. So far, 12 of the works have surfaced in Miami, FL:

1



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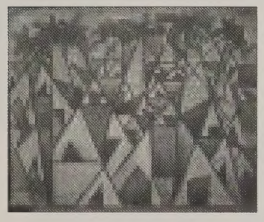

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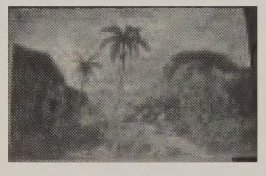
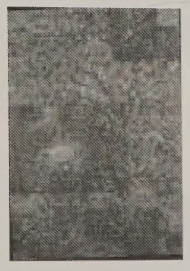
4

5



6



7

8

9

1. **EDUARDO ABELA** (Cuban, 1889-1965). ***Carnaval Infantil.*** Oil on panel. 21 x 30.5 cm (approx. 8 ¼" x 12"). *L14.325.

2. **FELIX ALARCON** (Cuban, 1800-1900). ***Jose Antonio Saco.*** Oil on canvas. 72 x 58.5 cm (approx. 28 ¼" x 23").

3. **RENE AVILA.** ***Paisaje.*** Oil on canvas. 84 x 68.5 cm (approx. 33" x 27").

4. **L. M. BRAILOWSKY** (Russian, 1867-1937). ***Escena Rusa.*** Oil on canvas. 50 x 66 cm (19 ¾" x26").

5. **FEDERICO CANTU** (Cuban, 1907-1989). ***El Nacimiento de Jesus.*** Oil on canvas. 61 x 46 cm (24" x 18").

6. **CUELLAR.** ***Paisaje Cubano.*** Oil on canvas. 28 x 43 cm (11" x 17").

7. **SANDU DARIE** (Romanian, 1908-1991). ***Untitled.*** Oil on masonite. 18 x 13 cm (7" x 5").

8. **CHARLES FRANÇOIS DAUBIGNY** (French, 1817-1878). ***Paisaje Normando.*** Oil on panel. 38 x 54 cm (15" x 21 ¼").

9. **ESTEBAN DOMENECH Y FERNANDEZ** (Cuban, 1886-1960). ***Helena.*** Oil on canvas. 68 x 56 cm (26 ¾" x 22").

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10. **VINCENT DOPASO.** ***Paseo de Yemaya.*** Oil on canvas. 105 x 80 cm 41 ¼" x 31 ½").

10

11. **JOAQUIN FERRER** (Cuban, born 1929). ***Retrato de Maria del Carmen Goicoechea.*** Oil on canvas. 97.5 x 73 cm (38 ¼" x 28 ¾").

11

12. **ADOLFO GALINDO LLAGO.** ***Paisaje Andaluz.*** Oil on canvas. 61 x 99 cm (24" x 39").

12

VICTOR MANUEL GARCÍA (Cuban, 1897-1969):

13

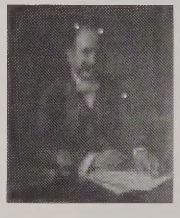
13. ***Cabeza de Mujer.*** Ink on paper. 36 x 23 cm (14 ¼" x 9").

14. ***Cabeza de Mujer con Collares y Argollas.*** Paper. No image.

ARMANDO GARCÍA MENOCAL (Cuban, 1863-1942):

15

15. ***Paisaje.*** Oil on canvas. 54 x 92 cm (21 ¼" x 36 ¼").



16

16. ***Retrato de Aniceto Valdivia, Conde Kostia.*** Oil on panel. 24.5 x 19 cm (9 ¾" x 7 ½").

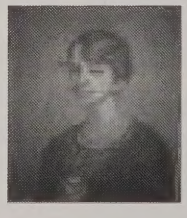
17

17. ***Retrato de Dama.*** Oil on canvas.

18

18. ***Retrato de Dama.*** Oil on canvas. 71.5 x 56 cm (28" x 22").

19. ***Retrato de Mercedes.*** Oil on canvas. 62.5 x 52 cm (24 ½" x 20 ½").



19

20. ***Santa Cecilia.*** Oil on canvas. 100 x 73 cm (39 ¼" x 28 ¾").

20

STOLEN ART (cont.)

22

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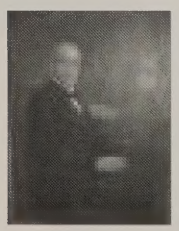

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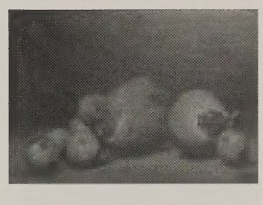

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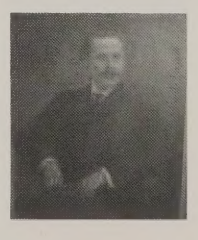

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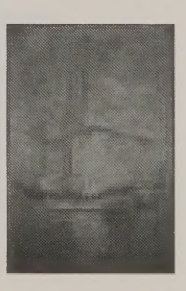


29

JUAN GIL GARCÍA
(Cuban, 1879-1932):

21. ***Cocos y Naranjas.*** Oil on canvas. 50.5 x 71 cm (19 ¾" x 28").

22. ***Frutas.*** Oil on canvas. 36 x 71.5 cm (14 ¼" x 28").

23. ***Naturaleza Muerta con Paisaje.*** Oil on canvas. 51.5 x 76 cm (20 ¼" x 30").

24. ***Paisaje con Bohio y Rio.*** Oil on canvas. 52.5 x 86.5 cm (20 ½" x 34").

25. **A.S.I.** ***Cardenal Examinando un Globo Terraqueo.*** Oil on canvas. 24.5 x 16.5 cm (9 ¾" x 6 ½").

AURELIO MELERO Y FERNANDEZ DE CASTRO (Cuban, 1870-1929):

26. ***Figura de Mujer.*** Oil on canvas. 109.5 x 77 cm (43" x 30 ¼").

27. ***Retrato de Caballero.*** Oil on canvas. 92 x 74 cm (36 ¼" x 29").

28. ***Retrato de Hombre.*** Oil on canvas. 126 x 90 cm (49 ½" x 35 ½").

29. ***Velero.*** Oil on canvas. 30 x 20 cm (11 ¾" x 7 ¾").

30. **BARBARO MIJARES.**
Sin Titulo (1/20 Partes) (de la serie estan perdidas la 10, 11, 12, 4).
Oil on canvas. *L14.325.

30

JOSÉ MIJARES
(Cuban, 1921-2004):

31. ***Mujer con Flor.*** Oil on canvas. 74 x 56 cm (29" x 22").

31

32. ***Mujer con Jarra.*** Oil on canvas. 70 x 51 cm (27 ½" x 20").

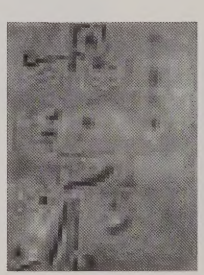
32

RENÉ PORTOCARRERO
(Cuban, 1912-1985):

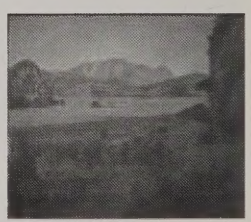
33. ***Catedral (Deposito Portocarrero).*** Oil on canvas.

33

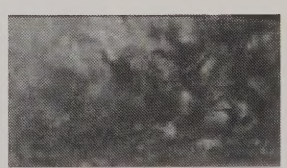
34. ***Malabarista.*** Watercolor on cardboard. 38 x 28 cm (15" x 11").


34

35. **DOMINGO RAMOS ENRIQUES** (Cuban, 1894-1956). ***Paisaje.*** Oil on canvas. 87 x 102.5 cm (34 ¼" x 40 ¼").


35

36. **ANTONIO RODRIGUEZ MOREY** (Cuban, 1874-1967). ***Recuerdo de Italia.*** Oil on masonite. 15 x 28.2 cm (6" x 11").


36

STOLEN ART (cont.)

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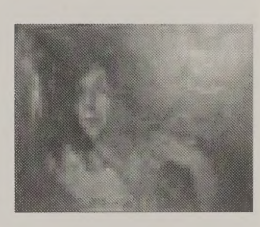

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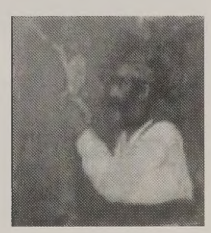

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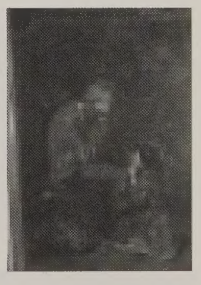

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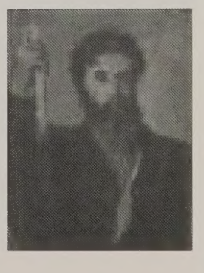

45

LEOPOLDO ROMAÑACH
(Cuban, 1862-1951):

37. ***Arabe con Violin.*** Oil on canvas. 54 x 71 cm (21 ¼" x 28").

38. ***Cabeza de Estudio.*** Oil on canvas on panel. 55 x 43.5 cm (21 ½" x 17").

39. ***Cabeza de Muchacha.*** Oil on canvas. 45 x 60.5 cm (17 ¾" x 23 ¾").

40. ***Cabeza de Mujer (Falso).*** Oil on canvas. 51 x 34 cm (20" x 13 ¼".

41. ***Campesino Rezando.*** Oil on canvas. 67 x 66 cm (26 ¼" x 26").

42. ***Dama con Pandereta.*** Oil on canvas. 64 x 98.5 cm (25 ¼" x 38 ¼").

43. ***Estudio de Anciano y Niña.*** Oil on canvas. 28 x 20 cm (11" x 7 ¾").

44. ***Estudio de Muchacha.*** Oil on canvas. 49.5 x 39.5 cm (19 ½" x 15 ½").

45. ***Estudio Masculino.*** Oil on canvas. 66 x 41 cm (26" x 16").

STOLEN ART ALERT®

46. ***Estudio para Mural "La Reconcentracion."*** Oil on canvas. 88 x 94 cm (34 ½" x 37").

47. ***Marina.*** Oil on canvas. 38 x 69 cm (15" x 27").

48. ***Muchacha de los Abruzzos***. Oil canvas. 116 x 81.5 cm (45 ¾" x 32").

49. ***Muchacha en un Jardin.*** Oil on canvas. 57 x 77 cm (22 ½" x 30 ¼").

50. ***Paisaje con Animal y Casas.*** Oil on canvas. 50 x 73.5 cm (19 ¾" x 29").

51. ***Paisaje de Italia.*** Oil on canvas on board. 24. 5 x 53.5 cm (9 ¾" x 21").

52. ***Pobreza.*** Oil on canvas. 41 x 51 cm (16" x 20").

53. ***Retrato del Coronel Carlos Manuel de Cespedes y Quesada.*** Oil on canvas. 72 x 56 cm (approx. 28 ¼" x 22").

54. ***Retrato de Dama.*** Oil on canvas. 46 x 46 cm (18" x 18").

46

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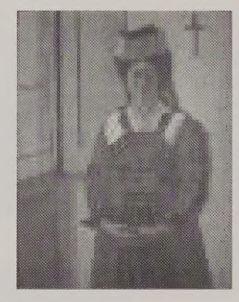

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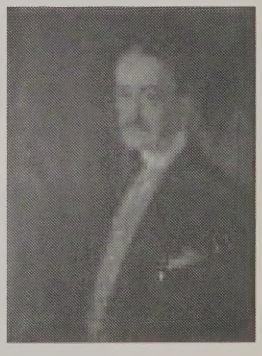
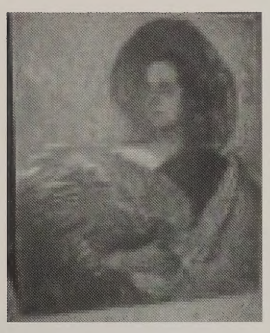


54

STOLEN ART (cont.)



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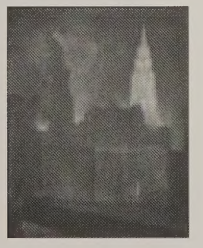

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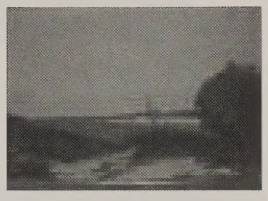

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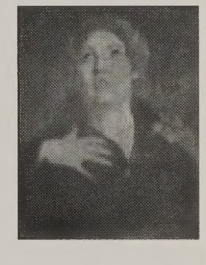

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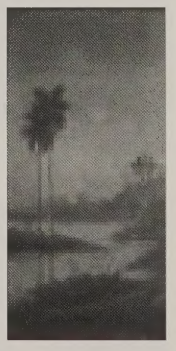
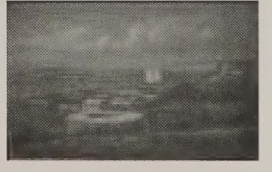


62



64

55. ***Retrato de Hombre.*** Oil on canvas. 60.5 x 67 cm (23" x 26 ½").

56. ***Retrato de Mujer.*** Oil on canvas. 72 x 60 cm (approx. 28 ¼" x 23 ½").

57. ***Rincon de Cayo Frances.*** Oil on canvas. 38 x 57 cm (15" x 22 ½").

58. ***Rostro Femenino.*** Oil on masonite. 46 x 65 cm (18 ½" x 25 ½").

59. ***Tristeza.*** Oil on canvas. 51 x 40.5 cm (20" x 16").

60. **RUDD.** ***Paisaje en un Malecon.*** Oil on canvas. 74 x 57 cm (29" x 22 ½").

61. **SAAVEDRA Y CORIAT.** ***Mayor General José M. Gomez.*** Oil on canvas. No image.

62. **J. SALLES.** ***Paisaje.*** Oil on canvas. 71 x 35 cm (28" x 13 ¾").

63. **UVER SOLIS.** ***Muchachos.*** Oil on canvas. 60 x 75 cm (23 ½" x 29 ½").

64. **JOSÉ JOAQUIN TEJADA Y REVILLA** (Cuban, 1867-1943). ***Bahia de Santiago de Cuba.*** Oil on canvas. 53.5 x 83.5 cm (21" x 33").

STOLEN ART ALERT®

Unknown Artist:

65. ***El Juicio de Salomon.*** Oil on canvas. 62 x 74 cm (24 ½" x 29").

66. ***Manchas.*** Oil on masonite. 17 x 18.5 cm (6 ¾" x 7 ¼").

67. ***Napoleon Bonaparte.*** Oil on canvas. 84.5 x 53 cm (33 ¼" x 20 ¾").

68. ***Paisaje.*** Oil on canvas. 32.5 x 55.5 cm (12 ¾" x 21 ¾").

69. **Unknown Artist (after CARLO DOLCI).** ***Jesus Curando al Paralitico.*** Oil on canvas. 50 x 37 cm (19 ¾" x 14 ½").

70. **BRONISLAWA WILIMOWSKA** (Russian/Polish, 1909). ***Polacw Wilanowie.*** Oil on canvas. 40 x 80 cm (15 ¾" x 31 ½").

65

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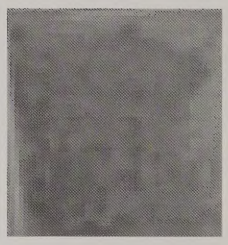

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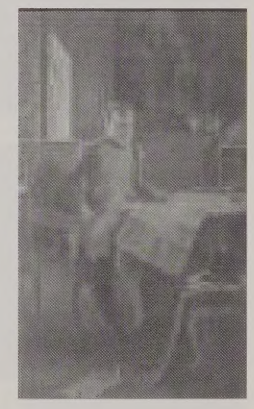

68

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69

STOLEN ART ALERT®

MISSING ART*

PAINTINGS

The following two paintings by **YU HANG** (Chinese, born 1966) were missing in transit between Venice and Hong Kong on August 15, 1994. *L14.339:

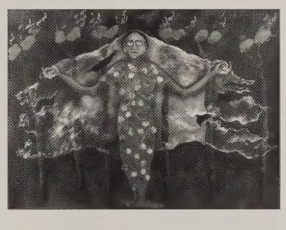
1

1. ***Chinese Princess,*** 1992. Oil on canvas. 181.99 x 177.5 cm (approx. 71 ½" x 69 ¾").

2

2. ***Popular Sports,*** 1992. Oil on canvas. 179.5 x 174.5 cm (approx. 70 ¾" x 68 ¾").

The following four paintings by Indian artists were missing in transit from Singapore to Bangalore on July 1, 2013. *L14.486:

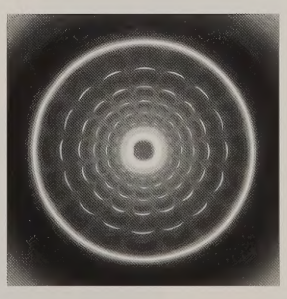


3

3. **ARPANA CAUR** (Indian, born 1954). ***Prakriti, 1990.*** Oil on canvas. 152.4 x 205.74 cm (60" x 81").

4

4. **SAKTI BURMAN** (Indian, born 1935). ***Conceive as Dream of Stone,*** 2000. Oil on canvas. 45.72 x 38.1 cm (18" x 15").



5

5. **BIREN DE** (Indian, 1926-2011). ***Untitled,*** 1990. Oil on canvas. 101.6 x 101.6 cm (40" x 40").

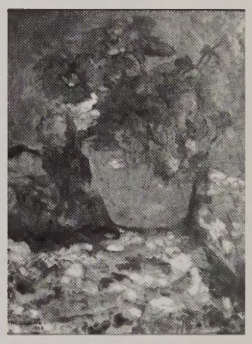
6. **FRANCIS NEWTON SOUZA** (Indian, 1924-2002). ***Untitled,*** 1993. See color photo on inside back cover.

**Numbering for the year 2014 Cumulative Index of Missing Art begins with this issue.*

7. **OSWALD ACHENBACH** (German, 1827-1905). ***Via Cassia Near Rome,*** 1878. Oil on canvas. 38.99 x 54.99 cm (approx. 15 ¼" x 21 ½"). Museum inv. no. 1036. *W14.20. Looted from the Schlesisches Museum der bildenden Künste, Breslau, Poland on January 1, 1945.

7

8. **MARCOS CASTILLO** (Venezuelan, 1897-1966). ***Cigarones Azules,*** 1928. Oil on canvas. 43.99 x 34.01 cm (approx. 17 ¼" x 13 ¼"). Signed l/l. *L14.567. Missing in transit between Caracas, Venezuela and Miami, FL on December 4, 2012. See also item no. 11 below.

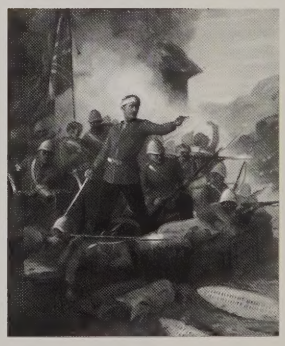


8

9. **ANDREA DEL SARTO** (Italian, 1486-1530). ***Holy Family.*** Unfinished oil on panel. 131.01 x 100 cm (approx. 51 ½" x 39 ¼"). *W14.11. Missing from storage at Schloss Purschenstein, Prague, Czech Republic on May 20, 1945.

9

10. **SIDNEY PERCY KENDRICK** (British, 1874-1955). ***Battle of Rorke's Drift.*** Oil on canvas. 76.2 x 63.5 cm (30" x 25"). *L14.306. Missing from a private club in Sutton, Quebec, Canada on May 27, 2009.



10

WORKS ON PAPER

11. **MARCOS CASTILLO** (Venezuelan, 1897-1966). ***Retrato de Silvia,*** 1945. Sanguine on paper. Signed l/r. 37.39 x 35.41 cm (approx. 14 ¾" x 14"). *L14.567. Missing in transit between Caracas, Venezuela and Miami, FL on December 4, 2012. See also item no. 8 above.

11

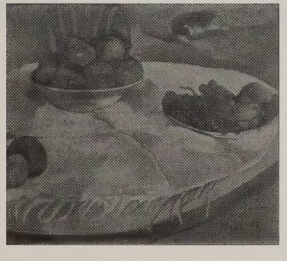
STOLEN ART ALERT®

RECOVERED ART*

PAINTINGS

The following two paintings (*N08.202) were stolen from the collection of Sir Mark Kennedy in England on June 6, 1970 and abandoned on a train from Paris to Turin. The Italian national railway auctioned them in 1975, where they were purchased for $25 by a Fiat autoworker, who eventually hung them in his home in Sicily. After the autoworker's son circulated pictures of the paintings in 2013 in an effort to sell them, the works were identified and recovered by the Art Theft Squad of the Carabinieri.

1



2

1. **PIERRE BONNARD** (French, 1867-1947). ***The Girl with Two Chairs.*** Oil on canvas. 55.24 x 45.08 cm (21 ¾" x 17 ¾").

2. **PAUL GAUGUIN** (French, 1848-1903). ***Fruit on a Table with a Small Dog.*** Oil on canvas. 48.9 x 54.86 cm (approx. 19 ¼" x 21 ½").

3

3. **HENRI MATISSE** (French, 1869-1954). ***Woman in Blue in Front of a Fireplace,*** 1937. Confiscated from dealer Paul Rosenberg by the Nazis in 1941. Purchased in Paris in 1950 by Niels Onstad, the husband of Olympic gold medalist and film star Sonja Henie, and hung at The Henie-Onstad Art Center, near Oslo, Norway, in 1968. In March 2014, the foundation agreed to return the painting to Rosenberg's heirs.

**Numbering for the year 2014 Cumulative Index of Recovered Art begins with this issue.*

STOLEN ART ALERT®

4. **ZORAN MUŠIČ** (Slovenian, 1909-2005). ***Nous ne sommes pas les derniers (We are not the last).*** Acrylic on canvas. *N94.254. R1661. Stolen from a private residence in New York City in 1994. Recovered with the help of the ALR in March 2014.

4

5. **HARRY PAYNE** (English, 1858-1927). ***The Heavy Brigade at Balaclava Charge of the Royal Scots Greys,*** 1889. Oil painting. 91.44 x 121.92 cm (36" x 48"). *L03.215. R1661. Stolen from a private residence in East Sussex, England on February 15, 2003. Recovered with the help of the ALR in June 2014.

5

6. Attrib. to **REMBRANDT HARMENSZ. VAN RIJN** (Dutch, 1606-1669). ***Child with a Soap Bubble.*** Oil on canvas. 60 x 49 cm (approx. 23 ½" x 19 ¼"). Stolen from the Musée d'art et d'histoire in Draguignan, France on July 14, 1999. *L99.1342. Recovered by local police and the central bureau charged with investigating the traffic of cultural goods (OCBC) in Nice, France on March 18, 2014.

6

7. **NORMAN ROCKWELL** (American, 1894-1978). ***Sport,*** 1939. Oil on canvas. 69.85 x 55.88 cm (27 ½" x 22"). *L13.1030. Stolen in Queens, New York on September 13, 2013. Recovered in Ohio by a private investigator working in conjunction with the NYPD in March 2014.

7

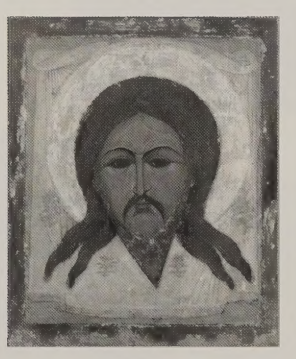
STOLEN ART ALERT®

RECOVERED ART (cont.)

8

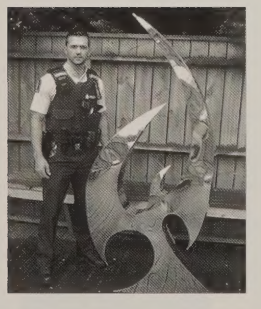
8. **ALEXANDER M. ROSSI** (British, 1840-1916). ***The Rabbit Fancier.*** Oil on canvas. *L97.901. Stolen in Edinburgh, Scotland on December 3, 1996. Recovered with the help of the ALR in London in March 2013 and returned to the owner in February 2014.70 x 58.01 cm (approx. 27 ½" x 22 ¾"). *L.12.10. Stolen from a church in Latvia in 2012. Recovered by law enforcement in London with the help of the ALR.

ICONS



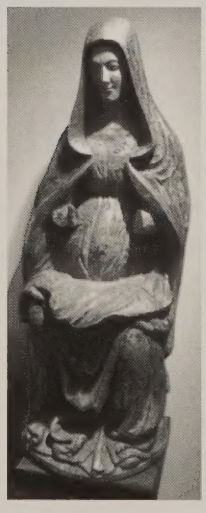
9

9. **Unknown Artist.** ***Holy Mandylion.*** Icon. *L12.10. Stolen from a church in Latvia in 2012. This loss was registered through Interpol and the object came up for sale in London. The relevant law enforcement agencies are involved and hopefully the Icon will be returned to the church.



10

SCULPTURE



11

10. **KEITH SIMPSON** (Kiwi, contemporary). ***Phoenix Rising.*** H: 2m. Stolen from the Epsom library in Auckland, New Zealand I 2004. Recovered by police near Ohakune, New Zealand in February 2014.

11. **Unknown Artist** (Italian). ***Madonna delle Grazie.*** Wood. Stolen in the fall of 1984 from the chuch of San Lorenzo in Rio Freddo Visso, Italy. Recovered by the Carabinieri in Venice in April 2014.

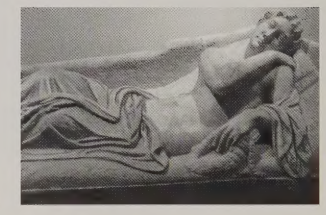
CHINESE ANTIQUITIES

12. ***Coffin of Imperial Concubine Wuhui*** (Chinese, Tang Dynasty, 618-906 A.D.). Stone. Ht: 2.5 m; L: 4 m. Stolen in Xi-an, China during a tomb robbery in February 2006. Recovered in the U.S. and returned to China's State Administration of Cultural Heritage in March 2014.

12

ROMAN ANTIQUITIES

13. ***Sleeping Beauty Sarcophagus Lid*** (Roman). Marble. Recovered by Homeland Security ICE from a warehouse in Long Island City, NY on February 28, 2014. The artifact was allegedly looted, smuggled out of Italy, and sold to convicted Italian antiquities trafficker Gianfranco Becchina in 1981.



13

CLOCKS, TIMEPIECES

14. **THOMAS POTT LONDON** (English, 18th century). ***Bracket Clock,*** c. 1735. Ebonized wood and brass. *L11.966.Stolen from a private residence in London on October 25, 2011. Recovered with the help of the ALR.

14

TAPESTRIES, TEXTILES

15. **BEAUVAIS MANUFACTORY** (French, 18th century). ***Tapestry.*** *W13.81. R1575. Stolen from the Château de Versainville in France on January 1, 1943 when the castle owners, members of the French resistance, were interned in a concentration camp. The tapestry was part of the collection of University of Sheffield in England for more than 50 years and was recovered with the help of the ALR in 2014.

15

16

39

52

7

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41

6

STOLEN ART

PAINTINGS

7. **JAN BRUEGHEL, THE ELDER** (Flemish, 1568-1625). ***Landscape with Travelers,*** 1611. Oil on copper. 17.5 x 29.01 cm (approx. 6 ¾" x 11 ½"). Signed and dated l/r. *L14.359. Stolen from a private residence in Lons le Saulnier, France on March 6, 2014. See also items 6; 8-13 inside.

The following two paintings were among 5 items stolen from a private residence in Nice, France on August 13, 1989. *L14.412. See also items 14 and 15 inside and 41 below.

16. **GEORGES BRAQUE** (French, 1882-1963). ***Yellow Basket,*** 1945. Oil. 19 x 32.99 cm (approx. 7 ½" x 13") Signed l/l.

17. **ALBERT MARQUET** (French, 1875-1947). ***Le port de Collioure,*** 1940. Oil. 48.01 x 59.99 cm (approx. 19" x 23 ½").

WORKS ON PAPER

39. **PALMER C. HAYDEN** (American, 1890-1973). ***African Dancers,*** 1932. Watercolor on paper. 36.48 x 45.72 cm (approx. 14 ½" x 18"). Signed l/r, with a museum label on the verso. *L14.548. Stolen from the Museum of African American Art in Los Angeles, CA on April 10, 2014. See also item 40 inside.

41. **PAUL SIGNAC** (French, 1863-1935). ***Lezardrieux,*** 1927. Watercolor. 27 x 43 cm (approx. 10 ½" x 17"). *L14.412. Stolen from a private residence in Nice, France on August 13, 1989. See also items 14-17.

SCULPTURE

52. **KURT SCHWITTERS** (German, 1887-1948). ***Snake Stick.*** Painted wood. 2.54 x 50.8 x 2.54 cm (1" x 20" x 1"). *L14.466. Stolen in Cumbria, England on January 1, 1993.

MISSING ART

6. **FRANCIS NEWTON SOUZA** (Indian, 1924-2002). ***Untitled,*** 1993. Acrylic on canvas. 60.96 x 76.2 cm (24" x 30"). *L14.486. Missing in transit from Singapore to Bangalore on July 1, 1993. See also Missing items 3-5 inside.

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